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FUNDAMENTAL ISSUES IN THE UNITED STATES

A BRIEF STUDY OF CONSTITUTIONAL AND ADMINISTRATIVE PROBLEMS

BY

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* *With the Assistance of the Information Department of the Royal Institute of International*

OXFORD UNIVERSITY PRESS
LONDON : HUMPHREY MILFORD
1936

OXFORD UNIVERSITY PRESS
AMEN HOUSE, E.C. 4
London Edinburgh Glasgow New York
Toronto Melbourne Capetown Bombay
Calcutta Madras
HUMPHREY MILFORD
PUBLISHER TO THE UNIVERSITY

PRINTED IN GREAT BRITAIN

PREFACE

At the present time the more urgent American economic questions raised by the depression have given place to general problems of political and social reorganization. Whatever measure of success has been achieved by the experiments known as the New Deal, it is now evident that no great permanent changes are likely to be made in the social and economic organization of the United States until the political and constitutional structure is made more adaptable to the needs of the modern world.

The problems of the United States are, indeed, far less pressing than those of Europe. The Civil War, fought seventy years ago, seems once and for all to have done away with force of arms as a means of settling disputes between the States. The permanent achievement of the United States lies in the fact that she has evolved a working legal mechanism to settle conflicts which in Europe may lead to the use of force, or, at any rate, to constant friction and ill-feeling. It is, therefore, well to remember that the legal and constitutional problems, which loom so large in the United States to-day, are the result of an attempt to establish the reign of law over a whole continent.

A system of federalism, designed to avoid the evils of centralization on the one hand and the chaos of disunited national States on the other, is no doubt the ideal way of ensuring peaceful democratic rule over a large geographical area. Yet although its form has become legal, formidable antagonisms between the parts remain. The growth of economic interdependence has brought up problems not envisaged by eighteenth- and nineteenth-century political theorists. Not only in the United States, but also in Australia and Canada, have economic disputes been recently joined to great constitutional questions. The decisions regarding the Australian marketing schemes and certain parts of the Canadian 'new deal' have brought home to us the importance of some of the constitutional problems which the United States have had to face for the last one hundred and fifty years. The federal system set up under the new Government of India Act will also inevitably have similar

questions to solve. It is all the more important, therefore, that citizens of the British Commonwealth should be ready to draw on the rich experience of the United States in matters of constitutional law.

Recent decisions of the United States Supreme Court have brought the constitutional issue into prominence, but no less important is that of political organization. Great social changes require an efficient administrative and legislative machinery, no less than the approval of the courts. Finally, on the economic side, the most important issue is that of public finance and taxation, on which at the present time the working of the whole economic system depends.

Further, in the international field, action by the United States is also greatly influenced by the American system of government. The system of checks and balances, and the division of powers, make it difficult for the executive to act on its own, but ensure that the country is not committed to participate in treaties to which American public opinion as a whole is opposed. With the record of European secret diplomacy before one, it is hard to escape the conclusion that American democracy is unlikely to surrender the right of control over foreign affairs which was guaranteed in the Constitution.

The object of this monograph is to give a brief account of these problems in their historical setting, and of the more immediate issues to which they give rise. It may well be that to American readers the problems discussed appear in different perspective, but it is hoped that this study within its obvious limits will be of interest on both sides of the Atlantic.

E. A. R.

OXFORD,
August 1936.

NOTE

THE author wishes to acknowledge his indebtedness to those who have assisted with their advice in the preparation of this study.

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NOTE: The following official abbreviations are used in the text:—

A.A.A.	Agricultural Adjustment Administration.
A.F. of L.	American Federation of Labour.
C.C.C.	Civilian Conservation Corps.
C.W.A.	Civil Works Administration.
F.D.I.C.	Federal Deposit Insurance Corporation.
F.E.R.A.	Federal Emergency Relief Administration.
I.C.C.	Interstate Commerce Commission.
N.I.R.A.	National Industrial Recovery Act.
N.R.A.	National Recovery Administration.
P.W.A.	Public Works Administration.
R.F.C.	Reconstruction Finance Corporation.
S.E.C.	Securities Exchange Commission.
T.V.A.	Tennessee Valley Authority.
W.P.A.	Works Progress Administration.

I

THE POLITICS OF EXPANSION

THE American Constitution, for which the average citizen of the United States feels a respect similar to that felt by a British citizen for the monarchy, was not in its origins an inspired document drawn up by a perfectly impartial body of men. Like most political achievements intended to bear the stress and strain of actual historical events, it was a compromise between different sets of political ideas and of economic interests. It was, as has been aptly pointed out, 'a specimen of a very rare historical achievement, the stopping of a revolution at the point most convenient for its original sponsors'.[1] The 'founding fathers' found themselves after the Revolution to be upper-class men of property, and though they approved intellectually of the abstract ideas of liberty and equality, they were realists enough to see that the building up of the young nation required solid economic foundations which could not easily be upset by the whims and moods of a politically uneducated democracy. At the same time they retained enough of their old political outlook to attach importance to the conception of sovereignty and enough of their revolutionary suspicion of the inroads which a too-powerful central authority might make in the rights of local communities.

Freedom, therefore, meant primarily State sovereignty on the one hand and individual property rights on the other, and the sphere of federal action was rigidly confined to certain specific issues. These two facts led to the establishment of the system of 'checks and balances'[2] between the President and the two Houses of Congress, with the Judiciary as an arbiter to see that the Constitution was upheld. Within the sphere of federal action, the administrative functions of the President and his Cabinet are rigidly separated from the legislative functions of Congress,[3] while federal action as a whole is strictly limited in

[1] D. W. Brogan, *The American Political System*, p. 15.

[2] See Bryce, *The American Commonwealth*, and Brogan, op. cit. For the principal Articles of the American Constitution see Appendix I.

[3] See below, p. 56.

its scope in order that the sovereign rights of the States shall be maintained. The main function of the Supreme Court is to insure these divisions of powers. In the conception of the system of checks and balances the influence of eighteenth-century French political theory can be seen, in contrast with older British tradition. Sovereignty was seen as being dependent on the rights of man, so that care had to be taken to prevent the unjust usurpation of power by individuals or groups. To this day this system of checks and balances acts as a buffer between the various political and economic forces within the country.

It was evident, however, that the mere guarantee of property rights was no final and ultimate democratic solution of the opposition between the freedom of the individual and the rights of society. It was their recognition of this fact which made the framers of the Constitution seem so far ahead of most of the radical reformers of their time. Property cannot, after all, be regarded solely from the individualist point of view. It depends on society, not merely for its legal security but even for its actual existence. And this becomes more and more significant as society is economically integrated, and the division of labour is increased. When society, in addition to sustaining, also makes possible the creation of property, political conflicts are not merely concerned with the political rights of individuals and communities, but also with the question of *who* shall control and enjoy property.

Yet there was one important reason why even this conflict of economic interest took a special form in North America. Apart from the Southern planters there was till recently no class which felt its property endangered, and no class whose hopes of economic betterment could only be satisfied at the expense of the rich. The Federal Government had in its possession, or acquired by treaty, purchase, or conquest, vast tracts of land for distribution among citizens. There was always land in the West to satisfy the propertyless citizens, while the interests of the manufacturers could be favoured by fiscal measures. Political conflict, therefore, with the all-important exception of the Civil War, was concerned with the division of the economic surplus controlled by the Federal Government, which was something over and above the total of the individual fortunes of American citizens. This conception of the Federal Govern-

ment as the distributor of a surplus still remains, and largely accounts for the agitation for the payment of the veterans' bonus, the Townsend plan, and such like.

The role of the frontier in American history has been emphasized so often that only one or two of its aspects need to be mentioned here. It afforded an outlet to the West for the industrial workers and led to a permanent shortage of labour, which accounts largely for the backwardness in the development of a strong trade-union movement and made unnecessary the creation of a working-class party. It is significant that Horace Greeley, famous for his advice—'Go West, young man'—at one time held socialistic views. Indeed, before the opening up of the prairies by the railroads, socialist and working-class movements were comparatively strong in the manufacturing centres. But from the Civil War till 1890 the propertyless classes were too busy staking out a claim for themselves to be interested in politics, and the rights of property were universally accepted as coextensive with individual liberty.

The closing of the agricultural frontier in the 1890's brought a period of economic conflict and uncertainty. For the first time depression could not be remedied by the occupation of new lands and the consequent increased demand for labour and capital. The poorer classes, and particularly the farmers of the West, realized that their only hope of a better economic position lay in depriving the rich Eastern financiers and manufacturers of some of their power. In the elections of 1896 the line of battle was fairly clearly drawn between rich and poor. Forty years later, in 1936, the electoral campaign seems once again to centre round this clear-cut issue.

But although the agricultural frontier has been closed for forty years, the American system retained till recently its expansive powers. 1896 was only a brief episode, and the next thirty years witnessed an extension of what may be termed the 'industrial frontier', helped in part by the world-wide rise in prices.

The native-born American could still rise easily in the industrial hierarchy, for what 'proletariat' there was consisted almost entirely of immigrant labour, except in the South, and it was naturally some considerable time before its political power could be felt. Meanwhile the bulk of the population remained satisfied

with the existing order because freedom of property rights continued to hold out hopes of individual social betterment. So long as the industrial and financial frontier was being extended both at home and abroad no acute class conflict was to be feared. The Spanish-American War and the World War of 1914–18 gave a great impetus to industry, and the period of European reconstruction in the 1920's served to make the United States the foremost financial Power of the world.

The significance of the depression of the 1930's lies in the fact that the period of American expansion seems to be over. If cyclical movements are for the moment left out of account and attention is concentrated on long-run 'secular' trends, we find that in every field there has been a slowing down. Population is increasing but slowly; immigration has virtually ceased; industrial production has long passed its period of most rapid increase (which occurred probably in the second decade of this century); agricultural expansion has ceased. In addition to this, the bulk of foreign immigrants have been absorbed into the social life of the country and economic classes are no longer as fluid as they were. Individual initiative, hard work, and personal good fortune have now ceased to be the key to riches and property for the average working-man.

In this way the ground has been prepared for a struggle between rich and poor. The latter have come to realize that the ensuring of individual property rights will be of no benefit to them because they have little hope of acquiring property. The former have been so schooled in the doctrines of individualism that any relinquishment of these rights seems only to pave the way to social disaster. By placing themselves at the service of the State, by identifying their interests with those of the community as a whole, and by yielding up some of the rights of individualism, the rich may still be able to retain their leadership. So long as they regard the State as something apart from themselves, as an organ whose sole function is to guarantee their own private rights, no solution of the difficulty seems possible, and the conflict is likely to become even more acute.

This fundamental change can be stated in slightly different terms. The *laissez-faire* assumptions on which the American political system is founded have as their ultimate goal individual liberty, which, translated into economic terms, is freedom of

disposal of individual property. The passing of *laissez-faire* has meant that property has become largely social. An individual's wealth is created and destroyed (witness the slump) mainly by social forces outside his control, so that freedom of disposal of that wealth has become far less important to him than the certainty of some economic security. And so the demand for security, whether of banking deposits, of labour conditions, or in old age, has come to be the main demand of the bulk of the population. The provision of security must be a social function —it cannot be completely an individual one—and therefore State action has to be extended far beyond the sphere appropriate to an economic epoch in which the main demand was for freedom of the use of property. At the moment, the American political system is struggling to adapt itself to this new need. In the century and a half since its foundation it has undergone many changes and has managed to adapt itself to the variations of the most dynamic century in history. Only once—in 1861—did it fail absolutely. Its problem to-day is perhaps even as difficult as in 1861. It will have to show greater flexibility than it did then if upheavals are to be avoided.

Viewed in this light the American system shows some degree of adaptability to economic circumstances, but meets with difficulties during certain periods of very rapid change or of crisis. Though so often thought of as being rigid and inflexible it has always been turned to purposes suitable to the dominant forces in the country. Its development can be understood most easily as being connected with the emergence of new social and economic forces, and as having been controlled and guided by the rising and expanding elements. Only when control has remained in the hands of sections or classes whose power was in relative decline, has the system appeared really to be unsuited to its environment. The years before the Civil War and the present time are probably the most striking examples of this.

This shows the inadequacy of the view that the development of the system has centred mainly round the problem of federal versus States' rights. By placing the Republicans on the one side and the Democrats on the other—Presidents Lincoln, Theodore Roosevelt, and Coolidge all together against Presidents Jackson, Buchanan, and Franklin Roosevelt—the fundamental issues very soon become blurred and confused. There is

in reality no contradiction in the extension of federal power by a Democratic President, in spite of the traditions of the Civil War and the existence of the Democratic 'Solid South'. It is true that the nature of the Constitution tends to give many controversies the appearance of the conflict between the federal and State powers, but the underlying causes are always to be found in the economic and social organization.

To illustrate this point a few examples will be useful. Till 1800, in the first few years after the adoption of the Constitution, the country's chief needs were the firm establishment of the federal system, a national fiscal policy, and a unified currency. The chaotic conditions of the 1780's had convinced the leaders of the Revolution of the need for greater centralization, and the people as a whole were still willing to follow their leaders. It was largely the genius of Hamilton that effected the necessary basis of federal centralization, but the bulk of the nation was not sufficiently unified to support his policy to the extreme limit of one nation-State.

Indeed, once a minimum of fiscal and financial unification had been carried out, extreme centralization was no longer of real advantage to the country, and it was this that gave the Democrats, as they later came to be called, their long lease of power, which continued with few interruptions till the Civil War. The period was primarily one of agricultural expansion in the South and West, and the success of the Democrats was due to the establishment of a political alliance between these two sections of the country sufficiently powerful to overwhelm the conservative forces of the North-East. The reason why political decentralization was the dominant tendency in these years is not far to seek. The territories of the United States were vast, transport was slow, and the settlement of the frontier required qualities of independence and local initiative which soon developed into local political patriotism. Then again, the establishment of new States made the maintenance of State sovereignty a matter of pride and jealousy. It was little wonder that the new settlers of the Ohio Valley refused to submit to a centralized government of New England lawyers and Southern planters, and preferred to bargain with the latter for the maintenance and development of State and local rights.

Yet in spite of the tendency of decentralization fostered by

the progressive forces, the federal power continued to grow. The reason was that territorial expansion lay in the hands of the Federal Government, and the free land at its disposal formed the national 'surplus' out of which its political supporters could be rewarded. The Louisiana purchase, the disputes with England over the Canadian boundary, and, later, the Mexican war, were the logical results of a policy of agricultural expansion, which, not insignificantly, was opposed by the financial interests of the North-East. Thus we find an expanding federal power going hand-in-hand with an increase in decentralization and an encouragement of easy credit and local banks in the interest of the new agricultural communities.

The downfall of the Democratic Party was in the end due to the fact that its control got into the hands of an economic group which represented a declining force in the nation as a whole. The original alliance between South and West was based to a very large extent on a real community of interests. With the invention of the cotton-gin, however, slavery gradually became really profitable, until it grew to be the whole economic basis of the South. This divergence of interest between the slave-owning South and the independent and expanding West would in itself have led finally to the dissolution of the political alliance. Nevertheless, the control of the Democratic Party remained ultimately in the hands of slave-owners, who, forced to support an institution of which the country as a whole disapproved, became sectional rather than national in their political outlook. The fundamental needs of the country as a whole were no longer those of the leaders of the Democratic Party, and a new political alignment had to be made.

After the middle of the century the real basis of American expansion came to be industry and rail transport, and the young and vigorous elements in the country naturally enough sought a political party which could represent these new economic forces. The rapid development of the railways linked the West more naturally with the North-East than with the South, and agricultural expansion became more rapid in the North-West than in the South-West. The Western farmer now looked to New York and other Eastern ports for the disposal of his products and not to New Orleans, and the South took the place of the North as the country's political backwater.

The Republican Party ruled the country for all but sixteen years between 1860 and 1932 because it was supported by the growing elements in the country. No doubt it was the party of big business, but the interests of the country as a whole coincided with those of business, and for the mass of the people opportunity in industry and freedom of enterprise was as important as free access to new land had been in the earlier period. The popular revolt under Bryan was bound to fail because the mass of town workers had no fundamental fault to find with the existing system; American industry could still offer the hopes of glittering prizes to its humblest recruits. It was not until 1930 that the beginnings were seen of the popular alliance between the poor in the towns and the poor in the country which Bryan had hoped for and failed to realize. Even now the foundations of this alliance are by no means absolutely secure.

The identification of the Republican Party with federal as against State rights naturally had its origins in the Civil War itself, but there were other factors which led to its continuation. Perhaps most important of these was the rapid development of communications. The Western settler was no longer as isolated as he had been before, and the building of the railways helped the growth of national as against local patriotism. This tendency must not be exaggerated, but it is true to say that the new settlers in the North-West were far less jealous of their local rights than, say, the pioneers of the Ohio Valley. An increase in centralization was, in the 'age of the Republicans', as vital to the needs of the nation as decentralization had been earlier in the century. Thus there has grown up the traditional identification of the two parties with these tendencies.

The important instruments used by the Federal Government to further the interests of the dominant elements were the tariff, the granting of lands to railways, and, in later years, imperialism, or 'dollar diplomacy'. By these and other methods American industry and finance gained the security necessary for their enormous expansion. No doubt it is easy enough to point to corruption here and there and to deplore the establishment of certain methods of business; in this respect the 'muck-rakers' of the past forty years have had a comparatively easy task. But the fact remains that, while it could continue to expand,

the system was a magnificent success, and retained the support of the bulk of the population.

In some important respects there was an extension of governmental control over business itself, but though this movement was in some degree inspired by reformers, it was not fundamentally hostile to the requirements of the expanding economic system. On the contrary, the healthy expansion of the system required the curbing of certain disruptive elements, and, so long as business could retain control of the seat of government, moderate extension of federal power was advantageous rather than harmful. Thus the establishment of the Interstate Commerce Commission in 1887 appeared at first to be a blow at the freedom of railway operation. In reality it enabled the business world to have the advantage of some sort of stability in railway charges, and the Commission's activities were always so restricted by the courts as to prevent any real violation of the property rights of the railways themselves.

The reform of the banking system which led to the establishment of the Federal Reserve System was somewhat similar. It has been cited as a notable instance of the Democratic Party's apparent desertion of its traditional role. Under Jefferson and Jackson central banks were regarded with abhorrence and under Bryan the Democratic Party was definitely lined up against the 'Money Interest'. But the establishment of twelve Federal Reserve Banks instead of the one central bank shows how strong the traditions of decentralization remained. The Federal Reserve Act of 1913 was thought at first to be aimed at the banking interests. In reality the reconstruction considerably strengthened the power of the banks, and was of great benefit to the financial interests of New York so long as they could control federal policy. American business, in spite of the lip service it pays to many of the principles of *laissez-faire*, has indeed benefited enormously by government action, and it is only when the control of the Federal Government seems to be slipping out of its grasp that it feels its position to be endangered.

Yet even if it is granted that the growth of government control was in the wider interests of business itself, its development is of great significance, because it indicates a departure from the absolute conceptions of individual property. Indeed,

American capitalists and the industrial wing of the Republican Party have not always, in actual fact, taken a very rigid individualistic view of property rights. The Republican Party started its career by freeing the slaves—'the most stupendous act of sequestration in the history of Anglo-Saxon jurisprudence'[1], and it is significant that throughout its history the stalwart defenders of individual property and of the rights of small enterprise have usually come from the insurgent wing of this party or from the Democrats. In this sense the anti-trust laws and some of the legislation of the Wilson Administration were conservative as compared with the aims of big business. And so we find that a life-long political 'progressive' like Clarence Darrow could be chairman of the National Recovery Review Board, so hostile to the N.R.A. and so narrowly individualistic in its economic philosophy.

This is one of the chief reasons for the failure of many of the American progressive movements. The reformers were naturally suspicious of the methods and philosophy of big business, and looked upon the 'money trust' and the big corporations as despoilers of the rest of the community. But their own philosophy of small-scale enterprise was economically reactionary even if politically progressive, and their static conception of property belonged to a past economic epoch. With all their faults, the big capitalists were more in touch with the times, and the people as a whole were quite aware of this. In an industrial system where the co-ordination of economic control was necessary for the exploitation of new productive technique, the static concept of property relations inevitably had to give way to a dynamic one.

It is therefore true to say that the age of Presidents Theodore Roosevelt and Wilson, who are sometimes thought of as the forerunners of the New Deal, was not so significant for the checks it imposed on big business as for its encouragement of economic penetration abroad and its reorganization of the financial system. Without these two things the hectic prosperity of the 1920's would have been impossible. As it was, the expansion of the system was enabled to continue, and the clash of interests between rich and poor was postponed. The task of

[1] Charles and Mary Beard, *The Rise of American Civilization*, vol. ii, p. 100.

Presidents Harding and Coolidge was therefore an easy one—provided that too long a view was not taken. All that was necessary was to see that no checks were put on an expansion which seemed to have solved all the country's political and economic problems. It was the misfortune of President Hoover that the final turning-point came so soon after his inauguration.

II

THE FRAMEWORK OF RECOVERY[1]

It has been widely held that the depression which began in 1929 was something more than the down-swing of a trade cycle; that it was in fact a crisis of the American system itself. The view which has been put forward in these pages is that, if the depression is proved to mark the turning-point in the expansiveness of the American industrial system, important changes in economic and political organization will be necessary before there can be true and lasting recovery. In a sense this is true of all depressions, for every recovery marks the beginnings of an expansion with new characteristics. But there come periods when new developments do not easily take place, that is, when the whole system of social, political, and economic relations is too rigid to satisfy the requirements of the country, and even more radical changes become necessary. The 'great depression' certainly seems to present such hindrances to recovery, and while there is little point in taking the extreme view that it differs in kind from the depressions of the past, its differences in degree are apparent.

The distinction between measures for recovery and for reform is not, therefore, as clear-cut as is sometimes thought. It has continually been urged, particularly by the business community, that if the New Deal had concentrated on recovery the depression would have long since been over and reforms would not have been necessary. So far as it goes, there is substance in this contention. Taking the short view there is little doubt that those parts of the programme which can be labelled 'reform measures' have retarded the recovery in business profits and stock prices which is necessary for the health of the business system. But if a longer view is taken, the inadequacy of such a solution is very evident. No lasting recovery is in fact possible if the aim is merely a return to the 1920's, and President Roosevelt's supreme merit is that he saw this. The fact

[1] For an annotated chronological summary of the principal Acts of Congress and Decisions of the Supreme Court during the period 1933–6 see Appendix II.

that his search for another solution has by no means met with complete success is no disproof of the fundamental correctness of his analysis of the situation.

The most significant change in American business psychology in the last seven years is that business leaders are now no longer convinced that they can 'deliver the goods'. This is perhaps the surest sign of the end of the expansiveness of the old system. As long as the leaders of finance and industry had confidence in themselves they could inspire trust in the people and retain political command. This confidence they never completely lost in previous depressions. It disappeared for the first time in 1932, and is unlikely ever to return in its ancient vigour. Business knows that on the old basis it cannot hope to find work for the ten million unemployed, and that the average member of the working class is now fully aware that there is little chance of his ever rising very much in his economic status. It is therefore on the defensive, and its only hope is to retain what it can of its profits and power. Business objectives have become sectional, and can no longer claim the support of the people at large. The analogy has been drawn between the position of American capitalism to-day and that of the Southern planting interests immediately before the Civil War. If it is not pressed too far, it can serve a useful purpose in an analysis of the present situation.

It must not be thought that these shortcomings are only to be found in the business section of the community. In fact the outstanding difficulty of the present situation is that there is no section with sufficient real confidence in itself to give a lead to the whole. The failure of business leaders to adopt a really constructive outlook has been stressed merely because they have till recently been the dominant and inspiring force in the country, and the decline in their position is therefore felt all the more. On the other hand, it must also be admitted that in every section of the country individuals and groups are to be found whose outlook is constructive and optimistic. The problem facing the United States is to give cohesion to these constructive forces, and is in no way merely one of party politics, but rather one of social and political organization. The importance of the reform measures of the New Deal lies in the fact that they do form part of a coherent constructive effort.

It is not difficult to find the principle underlying most of the constructive programme. It is undoubtedly that of giving *security*, as against the eighteenth-century principle of ensuring the freedom of enterprise, and its gradual extension over an ever-widening sphere has been taking place for a considerable period. In a sense it underlies the American conception of the tariff, but in more recent times it may be said that it first appeared in positive and explicit form in the agricultural measures of the Coolidge and Hoover Administrations. As soon as American agriculture stopped expanding it became politically necessary to bolster it up, and in this respect the Democrats, through the Agricultural Adjustment Act of 1933, were merely developing on slightly different lines the principles originated, indeed, by President Wilson, but consolidated and extended by the Republicans in the Farm Credit Act of 1923 and the Federal Farm Board of 1929.

The partial provision of security for agriculture did not, of course, constitute a very serious departure from the principles of free enterprise, but when the new method was extended to finance and industry it was evident that fundamental changes could not long be delayed. The turning-point came—under President Hoover, be it noted, and not under President Roosevelt—with the setting up of the Reconstruction Finance Corporation early in 1932. The function of the R.F.C. was to avoid wholesale bankruptcy by granting government credit to industrial and financial concerns, and it has been the most effective instrument in the last four years for taking the United States 'out of the red'. For business enterprise, the setting up of the R.F.C. was in the short run an assistance but in the long run a tragic admission of failure. It meant that the principle of individual initiative which had created the United States had at last lost its vitality, and that the expedient of government aid was necessary to prevent the downfall of the central stronghold of the system. Freedom of enterprise had become impotent as a safeguard of wealth, and the principle of security became the basis of the fight against the depression. The R.F.C. is something far more important than a temporary instrument for restoring solvency to American industry, for the very fact that its establishment was necessary shows that the old methods have outlived their usefulness.

The New Deal can thus be seen as the logical development of a process which had already begun. It was founded on the political necessity of granting to the other sections of the community the same kind of help as had been granted to big business by the R.F.C. The Federal Government was no longer merely the distributor of a 'national surplus' to an economic system run on the basis of free enterprise. It became the guarantor of economic values in general, and its task came to be that of providing this security for every section of the community.

This principle was well illustrated in the Administration's banking policy. The crisis which had resulted in the loss of millions of dollars of depositors' money called for a very radical reorganization of the whole banking system if confidence was to be restored. The actual changes made in the banking structure would probably not have been sufficient in themselves to accomplish this purpose. A far more direct and unorthodox method was chosen, namely, that of insuring the bulk of bank deposits. Thus by far the most important features of the Banking Acts of 1933 and 1935 were the establishment and development of the Federal Deposit Insurance Corporation, which directly gave security to the community's bank deposits. Whatever technical faults there may be in this device, it certainly served to restore confidence very rapidly. Yet the guarantee of banking solvency by public credit—for that is what the F.D.I.C. virtually amounts to—is the antithesis of a private banking system. In the Securities Act of 1933 and in the setting up of the Securities Exchange Commission an attempt was made to give the same kind of security to the purchaser of stocks and bonds. 'The burden of telling the truth shall be on the seller', said the President in his message to Congress recommending the Act. Unfortunately, so long as the American public likes to have its gamble on Wall Street, no amount of legislation of this kind will protect it from losses, although the activities of the S.E.C. will be of real benefit to the bona-fide investor.

The wider policy of price reflation was also designed to prevent losses and put an end to the spiral of deflation and falling prices which had become a terrible burden on the debtor classes. So long as debts were fixed in terms of a dollar whose purchasing

power was subject to wide variations, no debtor could feel secure. Although agricultural debt was not a very large proportion of the total indebtedness in the country, the farmers were a politically powerful class, and it was their influence as much as anything which led to the devaluation of the dollar and the successful raising of prices. This was the first step—the salvage of the debtor class, in particular the farmers. The next step was to give the dollar a purchasing power 'which will not vary in this generation', once prices have been raised to the requisite level. This stage presumably has not yet been reached, and, if it has, no indication has been given of the precise steps to be taken to ensure stability in the future.

The easing of the burden on the debtor class by granting them security against a dollar of ever-increasing value in terms of commodities brought about an important conflict which, significantly enough, was settled in favour of the new principle of security and against the old ideas of sanctity of contract and absolute property rights. Debts were not only fixed in terms of dollars, but in terms of dollars representing a certain fixed weight of gold. The gold clause decision of the Supreme Court, in February 1935, in effect recognized the power of Congress to nullify those parts of all contracts which implied the maintenance of a definite gold value for the dollar. The fixing of the value of the currency was a matter which Congress alone could decide, and the rights of private property were subordinate to this. Once again the idea of wealth as an absolute individual possession had to give way to that of its dependence on the welfare of the whole social system.

The setting up of the R.F.C., the insuring of bank deposits, and the establishment of control over the value of the currency were and are the foundation stones of the reconstruction effort. Compared with some of the more spectacular experiments in social control they sometimes appear to be uninteresting, but nevertheless their importance is overwhelming. This lies partly in the fact that either their constitutional validity has not been questioned or else it has been upheld, so that, unlike many of the other measures, they have not proved to be abortive in the long run. But their chief significance is that they represent such a great departure from traditional individualism. In this

respect they form part of a far more radical policy of social control even than the N.R.A. and the A.A.A. For in the latter two measures the regulation of private enterprise was in a very real sense a voluntary matter. The N.R.A. and the A.A.A. did no more than extend to industry and agriculture in general the ideas of production and price control which had long been familiar to the managements of the big corporations. The support of enterprise with public credit, the insurance of bank deposits, and the annulment of gold contracts were quite another thing. They were radical departures from existing ideas of individual initiative and freedom of enterprise, and, as such, can be thought of as heralding a new era of social organization.

Organized relief was a similar departure from traditional practice. At the time of the American Revolution the United States automatically took over the Elizabethan poor law system, but this had not developed as in England. During the boom European systems of unemployment insurance were stigmatized as demoralizing and un-American. But federal relief grants soon became necessary because the principle of providing for the unemployed was part of the whole social programme. It is true that both relief and public works were thought of as temporary expedients—to bridge over the time until private business was on its feet once again and could provide work for the unemployed. Yet they were the final recognition that individual initiative alone could not secure men their livelihoods. The more permanent measures, contained in the Social Security Act of 1935, had as their object an all-embracing scheme of social insurance which was intended once and for all to banish the haunting fear of insecurity.

Space does not permit of a full examination of the Social Security Act. Its specific provisions may very well be changed, and it is possible that its constitutional validity may be sharply disputed in the courts, but, as a departure from traditional American individualism, its significance is obvious. Its unemployment provisions are of particular interest, mainly because they represent a conception of the nature of unemployment very different from that which underlies British unemployment insurance legislation. In Great Britain unemployment is thought of as a risk, and relief is given by way of unemployment

insurance. Under the American scheme unemployment is considered to be a normal cost of business, and relief is given by way of unemployment *compensation*. It is thus more similar to our workmen's compensation than to our unemployment insurance. The contrast between a risk and a normal cost of business is perhaps a vital one. The latter concept seems at any rate to imply the possibility of social control and an admission of collective responsibility which the former does not.

A notable omission from the Social Security Act is a comprehensive scheme of health insurance. Perhaps it was thought that, as the prime purpose of the Act was the provision of economic security and the abolition of the worst forms of poverty, the existing methods for combating sickness were sufficient.

The granting of doles and subsidies out of public revenues and the establishment of social services were important steps towards a new form of social organization. Yet in a sense they were largely negative, for they were protective rather than productive measures. In one direction, namely, that of providing security even at the cost of destroying private enterprise and individual initiative, they went very far, but they were never intended to form part of the driving force which would bring about a new era of economic activity. It is of great significance that, when the New Deal entered into the field of positive planning, it encountered obstacles and difficulties, many of which ultimately proved to be insuperable. It was indeed shrewd foresight which made the Administration restrict its financial reforms to the regulation of prices and credit and the insurance of deposits. Had an attempt been made to interfere drastically with the banks themselves, the financial reforms might have been as temporary as those of the A.A.A. and the N.R.A. As it was, by the choice of less direct methods, some permanence was given to the programme of financial reconstruction.

The attempts to regulate industry under the National Industrial Recovery Act of 1933 offer a sad contrast to the measures just described. The general objects of the Act were once again to give security to certain economic groups. Industry was to be protected by the elimination of 'unfair' competition and price-cutting and by the suspension of the anti-trust laws; the

rights of labour were to be insured by the regulation of wages and hours and of child labour, and by the famous Section 7(*a*),[1] which was to establish the principle of collective bargaining. In theory the scheme was one of industrial self-government based on a system of cartellization established by the codes, which were drawn up by the various industries themselves. The provisions for the elimination of price-cutting and unfair competition met with some success, since it was often in the interests of the manufacturers themselves to see that the rules were obeyed. The labour provisions, however, presented a great difficulty. Trade union organization was weak, and split by the conflicting claims of company, craft, and industrial unions; business men were unaccustomed to collective bargaining, and had a deep-rooted objection to the 'closed shop'. It often fell to the Federal Government to uphold the rights of labour, so that business men became more and more hostile to the whole scheme. As there was no proper machinery to enforce compliance, the N.R.A. very soon broke down, and when in April 1935 the Supreme Court unanimously declared the N.R.A. unconstitutional, it was in fact passing a death sentence on what was already a corpse.

The fundamental reason for the break-down of this part of the New Deal was that the economic system was not ready for such a degree of centralized regulation. The methods of extreme individualism had, no doubt, broken down, but the transition to an organization which was more closely knit was bound to be gradual. Co-operation could not be imposed from above. The traditions of small-scale enterprise, which had been fostered by the anti-trust laws, could not be expected to give way overnight to a scheme of wholesale cartellization. The workers, most of whom had been accustomed to bargain individually, were un-

[1] The text of this was as follows: '(i) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (ii) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing or assisting a labor organization of his own choosing; and (iii) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.'

prepared for the gift of collective agreements, and were not yet sufficiently united to make the most of their new opportunity. Co-operation among business men and the organization of trade unions depend alike on the requirements of the economic system, and can only grow in strength under certain definite conditions. Although these conditions, broadly speaking, exist to-day, they have not existed for very long, and it will be some time before the country is ripe for another experiment on the lines of the N.R.A. It is significant that both the 'conservative' and the 'liberal' judges in the Supreme Court were in agreement in the N.R.A. judgment.

Although vital parts of the agricultural policy of the New Deal have also been declared unconstitutional, the A.A.A. stands on a rather different footing from the N.R.A. In the first place, although the schemes of regulation related to a number of different crops, agriculture can be thought of as having an economic unity which the industries subject to the N.R.A. codes never had. In the second place, there was usually not the same opposition between employers and employees, though, it may be noted, in the districts in the South where the interests of the landlord and the share cropper were in conflict, the A.A.A. was far less of a success than elsewhere. A great deal has been said of the folly of 'paying people to produce less', and there is no doubt of the correctness of the ordinary man's feeling that the destruction of commodities is criminal when there are millions of consumers left unsatisfied. But, as Secretary Wallace has pointed out, the A.A.A. was in reality simply the 'farmers' tariff'. For years manufacturers had been able to sell their products in a restricted market and obtain profitable prices from the consumer. Why should farmers not have the same advantages? The basis of the protection was a commodity tax—a customs duty on imported manufactures, and an excise tax on raw agricultural products when they were 'processed'. But in the case of industry—and this ultimately proved to be the vital difference—the proceeds of the tax were used for ordinary Treasury purposes.

The chief reason for the comparative success of the A.A.A. was naturally the fact that compliance with its regulations entitled the farmer to substantial cash benefits. The same

reason is, of course, the basis of all successful industrial cartels, but the benefits are not so immediately obvious. But it must also be remembered that the American farmers showed considerable ability in co-operating with the Department of Agriculture in setting up local committees to deal with crop control, and it is claimed that the A.A.A. was able to make full use of the traditions of rural democracy and self-government which had been dormant ever since the days of the 'frontier'. In areas where there were no very great variations in the size of farms the schemes seem to have worked most easily. Indeed the A.A.A. was greatly assisted by the comparative absence of the opposition between large and small producers in many areas of the country.

Whatever its shortcomings, the A.A.A. on the whole managed to restore some order in the chaos of American agriculture. It was admittedly a makeshift; production was on a scale which required a large export market, and, if this market could not be secured, crop reduction in some form or other was inevitable. Enlightened farm leaders always maintained that the best solution to the problem would have been a decrease in the tariffs on manufactures leading to an increase in both exports and imports, but politically speaking this was impracticable. American industry has grown up behind tariff walls, and there are too many vested interests in opposition to lower duties. The only alternative was some form of 'farmers' tariff', and this is what the A.A.A. was intended to be. Though hitches occurred in the programme, it never actually broke down. It was finally killed by a decision of the Supreme Court in January 1936, but it is significant that three of the nine judges returned a dissenting judgment upholding the constitutionality of the A.A.A. Further reference will be made to this decision in what follows, but the existence of a strong minority view among the judges differentiates the A.A.A. decision from the N.R.A. decision. In the latter case there was no doubt that the N.R.A. was unsuited to, and incompatible with, the existing political and industrial system, while in the former case there was a doubt. The A.A.A. constituted, in the view of the majority, an infringement of States' rights, but it was not in obvious conflict with the whole economic system.

This very brief summary of the most significant legislative

measures of the New Deal[1] has shown, it is hoped, that the programme was not merely a heterogeneous collection of *ad hoc* palliatives. At every stage the principle of providing security was set up either in opposition, or as a prop, to the existing individualistic order. Of the actual methods used, those that relied on monetary or fiscal action have met with more success for the simple reason that, from the foundation of the Republic, taxation and monetary policy have been two of the most important instruments of power in the hands of the Federal Government. Their use in such unfamiliar fields as doles to capital and labour, and banking insurance, did not violate too ruthlessly existing ideas, while reforms in industry and agriculture met with far more violent opposition, and finally had to be curtailed. Interference on the part of the Federal Government was tolerated and welcomed in so far as it was restricted to the 'socialization of losses'. More than this the powerful forces which still ruled the country were not prepared to accept.

To Europeans the New Deal as it stands in 1936 seems hardly to deserve the name of 'the Roosevelt Revolution' which has been applied to it. It is in no possible sense an experiment in national planning, and has left the economic system of the United States far more individualistic than that of most European countries. It has, on the other hand, developed a vast system of national insurance and assistance in nearly every department of the economic life of the nation. It has brought about a revolution in ideas which is likely to be permanent, and has emphasized the loss of confidence in free enterprise and private initiative caused by the collapse of the 1929 boom. It is to this change in fundamental values to which the United States must now adjust herself. In most other countries the transition was carried out comparatively slowly. The violence of the change in the United States has brought problems which will need many years of hard work to solve.

These problems must now be examined in greater detail. The difficulties to which they give rise account for most of the shortcomings and failures of the New Deal, and will have to be overcome if fresh life is to be infused into the system. The main task of the New Deal and what will follow it has not been and

[1] For an annotated chronological summary of the principal Acts of Congress and Decisions of the Supreme Court during the period 1933–6 see Appendix II.

will not be that of providing economic recovery or even that of carrying through liberal reform measures, but something far wider. Indeed, the very distinction between recovery and reform, so popular in the United States during the last three years, is an unreal one. In the narrow economic sense recovery may be thought of as simply the restoration of business profitability which in itself is expected to set the whole economic machine working smoothly once more. The modern economic system has grown to be so complex and so far removed from the pure business world of orthodox economic theory that business profitability in itself is not a sufficient guarantee of the absence of losses elsewhere—especially to the worker and the farmer in the case of the United States. This wider view of the meaning of recovery includes reform and is inseparable from it. The best elements of the United States, irrespective of political party, are aiming at a real recovery of this kind, which the old type of business prosperity cannot in itself guarantee.

But because the problem is something more than the restoration of profits to business, the efficiency of every element of the economic and social system is called into question. The New Deal in fact attempted to solve so many problems all at once that it inevitably brought to light all the main weaknesses of that system. The rest of this essay will be devoted to discussing three main difficulties which have beset the New Deal at every turn—the Constitution, the relation of administrative appointments to party politics, and the problem of finance.

III

THE CONSTITUTIONAL ISSUE

'WE are under a Constitution', said the present Chief Justice of the Supreme Court when Governor of New York State, 'but the Constitution is what the judges say it is.' The power of judicial review of the constitutionality of Acts of Congress is perhaps the most distinctive feature of the American system of government. The Constitution itself was an instrument intended to maintain a careful balance between the federal power, the States, and individual citizens through the system of 'checks and balances'.[1] It can only be altered with considerable difficulty, as a proposed amendment must first be adopted by a two-thirds vote in each House of Congress, and then be ratified by the legislatures or conventions of three-fourths of the States. Any far-reaching changes in the social and economic life of the country depend therefore for their success largely on whether or not they are deemed compatible with the Constitution.

The power of the Supreme Court to review federal and State laws is, as a matter of fact, not expressly granted in the Constitution. 'The judicial power', it says, 'shall extend to all cases in law and equity under this Constitution'. The power of review was, however, definitely established during the term of Chief Justice John Marshall, who held office from 1801 to 1835, in spite of the opposition of President Jefferson and his successors, who were always suspicious of any extension of the federal power over the States. Marshall's successor, Roger Taney, appointed by the radical Democrat President Andrew Jackson, took a rather different view of the Constitution. Under Marshall 'the powers of the Federal Government were sufficiently expanded to enable it to meet the westward growth of the country':[2] under Taney the view was taken that 'the then existing distribution of powers between the States and the national Government should be regarded as something essentially fixed and unchangeable'.[3]

[1] For the principal Articles of the Constitution see Appendix I.

[2] Paul H. Douglas, *Social Security in the United States*, p. 322.

[3] E. S. Corwin, *The Twilight of the Supreme Court*, p. 11.

Thus there are to-day two very different traditions regarding the nature of the Constitution in its relation to federal power, which were established by the decisions of the Supreme Court during the first century of the Republic. The number of precedents on each side is very considerable, and it is sometimes maintained that the Supreme Court can now find almost anything constitutional by citing the appropriate judgments. But this extreme view goes too far. It is perhaps more correct to say that there are usually to be found in the Supreme Court judges who tend to adhere to one or other tradition, and that on many controversial issues there is a sharp division of opinion. On the other hand, a great many decisions are unanimous, and this indicates that there are certain principles to which federal and State legislative acts, however interpreted, must adhere.

The great constitutional controversies arise of course from the fact that under changing social and economic conditions the words of the Constitution and of the various amendments often do not mean the same things as they originally did. The interpretation depends on the judges themselves, and the personnel of the Court is consequently all important. This has been recognized by nearly all American students of the subject, who have sometimes regarded the Supreme Court as a third chamber with the power of vetoing certain Acts of Congress. Appointments to the Court are made by the President with the approval of the Senate, and nearly always follow strict party lines, though the division in the Court is broadly between 'conservatives' and 'liberals', which by no means necessarily corresponds with that between Republicans and Democrats. Although the justices are men of the highest eminence and integrity, it is idle to pretend that their past social and political background does not sometimes obtrude itself in their judgments of the very wide social and economic matters which come before them. This was admitted even by Lord Bryce, who was very careful to take a moderate view of the question.

At present the Court consists of a Chief Justice and eight associate justices. The Constitution nowhere lays down how many justices there shall be. It would therefore be possible for a President with the backing of the Senate to pack a recalcitrant Supreme Court with members of his own party. Only once has

it ever been suggested that this was done.[1] There is no doubt that recourse to such an action would be highly unpopular in the country, since for the mass of Americans the Constitution is the supreme guarantee that they shall be ruled by laws rather than by men. Whatever its decisions, the Court retains the respect and reverence of the country because it is the supreme interpreter of the highest law.

One of the most important powers granted to Congress under the Constitution was 'to regulate commerce with foreign nations, and among the several States'. This power of regulation of interstate commerce has been one of the chief instruments whereby the activities of the Federal Government have been extended, and the interpretation of its meaning has determined the constitutionality of many acts of Congress. Clearly both the words 'regulate' and 'commerce' may be taken to have a variety of meanings. The early decisions of the Supreme Court, under the influence of Chief Justice Marshall, tended to give a rather wide interpretation of the word 'commerce'. Under the Federalists' conception of the national government the word was almost identified with 'intercourse'. But with the decline in the influence of the North-Eastern merchants and the rise to power of the agriculturists, a far narrower interpretation became common, and it is significant that in an age when transport was the chief economic problem of an ever-expanding country, interstate transport became the most important part of interstate commerce.

The 'commerce' clause came to have even wider importance after the establishment of the Interstate Commerce Commission, the main object of which was the regulation of railway rates. In its early years the I.C.C. encountered severe opposition in the courts, and found its activities greatly hampered. But after 1910 a change occurred, and federal regulation tended to supersede State regulation even in *intra*state transport. In fact the Court took the view that the railway system of the country was a unity, and that, without power to regulate its parts, federal control of the whole would be hopelessly hindered. The meaning of 'regulate' was correspondingly extended, until, in 1925, a resolution was passed by Congress instructing the I.C.C. 'to grant the lowest lawful rates to depressed agriculture, and

[1] On the occasion of the so-called 'legal tender' decisions of 1869 and 1870.

to consider the economic position of an industry or region as a factor in rate-making'. As applied to the railway rates, the 'commerce' clause is to-day an all-important instrument whereby the Federal Government can effect the location and planning of industry, but beyond mere rate-making the position is far more doubtful. On May 6, 1935, by a six to three majority, the Supreme Court declared The Railroad Pensions Act of 1934 to be unconstitutional. The Act set up the combined pension fund for all railways in order to ensure that the bankruptcy of any one line should not deprive its old employees of benefits. The majority held that such a pooling of funds amounted to depriving the more prosperous railways of their property 'without due process of law', and also that the Act was not strictly a regulation of interstate commerce.

With regard to articles entering into interstate commerce it has usually been held that interstate regulations applied so long as the articles remained in their original packages or were not resold locally. Up to this point federal and not State regulations were applicable, but exceptions were made in the case of certain noxious goods, such as liquor, drugs, lottery tickets. Under the Interstate Commerce Commission, federal control was also extended over sleeping-car companies, pipe-lines, cables and telephones, and later over air communication (1926), radio (1927), and stock exchanges (1934).

Another wide sphere for federal regulation was opened up by the Sherman Anti-Trust Act of 1890. This was originally intended to place restrictions on trade agreements between manufacturers, but its interpretation has not always been easy. Thus, in 1895, the Sugar Trust was deemed not to come under the Act even though it had a monopoly of the distribution of refined sugar, on the grounds that its manufacture was purely local. In later judgments, however, the view has sometimes been held that when price regulation affects the commerce of the nation as a whole, it comes properly within the sphere of federal supervision. This was recently emphasized in the minority judgment on the constitutionality of the Guffey Coal Act of 1935, and also in Chief Justice Hughes's separate judgment. The Chief Justice maintained that, though the creation of a compulsory machinery for collective bargaining was an infringement not only of States' rights, but also of the

due process clause of the Constitution, the price-fixing provisions of the Act properly came within the sphere of federal action.

The division of American economic life into interstate and intrastate spheres is clearly an abstract one. To-day business is a *continuum*, and can no longer be regarded as a purely local affair, so that the interpretation of the 'commerce' clause has become one of extraordinary difficulty. Every form of business, practically speaking, has at least an indirect effect on interstate commerce, and the question to be decided is ultimately to what extent an indirect effect should be taken into consideration. In deciding that the N.R.A. was unconstitutional, the Supreme Court maintained that the distinction between direct and indirect effect was a well-established principle, though the 'precise line can only be drawn as individual cases arise . . . otherwise . . . there would be virtually no limit to the Federal power'. Similar reasons were also given by Justice Sutherland when he handed down the majority decision invalidating the Guffey Coal Act. It is easy to appreciate this difficulty, but it would seem that the result is to give the Court extraordinarily wide powers of discretion to lay down social and economic principles. This has always been the case, but its importance is greater to-day than ever before.

Another very doubtful example is that of the holding company, which may be legally incorporated in, say, Delaware, have its head office in New York, and own or control operating companies scattered about the country in a dozen or more States. In such a case financial control is undoubtedly interstate, but can financial control be said to be included in the word 'commerce'? The question will remain an open one until the Supreme Court decides the constitutionality of the Public Utility Holding Companies Act of 1935. This Act required that certain of these holding companies should be dissolved before 1937. In the past the power of the Federal Government to dissolve trusts engaged in interstate business has been maintained, but whether the holding companies can similarly be dissolved is doubtful.

All the possible ramifications of the 'commerce' clause are indeed too numerous to mention, and the decisions of the Supreme Court in connexion with it are therefore crucial. In 1933 and 1934 the people of the country were led to imagine that there was practically no limit to the emergency powers

allowed to the Federal Government. The N.R.A. decision brought them back to legal realities, and there has now been a definite reaction, which has been confirmed by the recent decision on the Guffey Coal Act. Nevertheless there remains the fact that the various parts of the economic system are becoming more and more closely related, and that business is a *continuum* and not a mere aggregate of independent units. The Supreme Court has usually shown, though sometimes reluctantly, that it is ready to interpret the Constitution in the light of current social conditions. The vital question for the United States to-day is whether the Court will be 'liberal' or 'conservative' in its interpretations of the legislative demands of Congress, and its view of the scope of the 'commerce' clause is not the least important factor in determining the development of the economic system.

While the 'commerce' clause has been the most important means whereby federal control has been extended, the 'due process' clause has been the chief mainstay of the supporters of individual rights against the encroachments of governments, whether federal or State. In the fifth amendment (part of the so-called Bill of Rights which was added to the Constitution in 1791) it is laid down that no person shall be 'deprived of life, liberty or property without due process of law'. After the Civil War it was thought that additional safeguards were needed in order to ensure the civil rights of the emancipated negroes in the South. This resulted in the fourteenth amendment, which contains the words: 'nor shall any State deprive any person of life, liberty or property without due process of law'. Originally the 'due process' clause was intended to protect the freedom and property of individuals, but gradually its scope was extended to cover the property of corporations as well. This was the natural result of the change in industrial organization after the Civil War and the growth in the importance of corporate as compared with individual property. The legal conception of a person was greatly broadened with the growth of systems of corporation law, and it was natural that the meaning of the word 'person' in the fifth and fourteenth amendments should be similarly extended. The fourteenth amendment, indeed, has often been cynically thought of as guaranteeing the freedom of corporations rather than of individuals.

Side by side with the 'due process' clause, an important protection of property rights has existed in paragraph 10 of Article I of the Constitution which lays down that 'no State shall . . . pass any . . . law impairing the obligations of contracts'. Its validity was extended to corporations as early as 1819 in the Dartmouth College decision of the Supreme Court. The 'contract clause' appears, however, to be somewhat limited by the police powers of the States, and also, as we shall see, by certain conceptions of general welfare or of the existence of an emergency, which the courts may from time to time accept. Though important, it has not in fact withstood the pressure of economic events as completely as the 'due process' clause, except under very special circumstances. Recently, in the Minnesota Farm Mortgage Moratorium case, the Court decided by a five to four majority that a state of emergency had been brought about by the economic situation, and that the State of Minnesota was therefore entitled to take proper action to meet it, even if this involved the suspension of contract payments. However, this case was of such a special character that it cannot be relied on generally.

The Supreme Court has never actually given a definite meaning to the phrase 'due process' on which the applicability of the clause depends. Professor Corwin[1] refers to 'the Court's ratification of the idea, following a period of vacillation, that the term *liberty* of the 'due process' clause was intended to annex the principles of *laissez-faire* capitalism to the Constitution and put them beyond the reach of State legislative power'. But this surely attributes too rigid an attitude to the Supreme Court. The late Justice Holmes remarked that he could discover 'hardly any limit but the sky' to the Court's power in disallowing State acts 'which may happen to strike the majority of this Court as for any reason undesirable'.[2] This is perhaps a sounder example of the liberal position. In point of fact, however, the Court has recently shown that it is prepared to grant to the States considerably wider powers than have usually been thought consistent with the 'due process' and 'contract' clauses. For example, by a five to four majority the Court recognized the power of the State of New York to regulate milk prices within

[1] *The Twilight of the Supreme Court*, p. 77.
[2] Quoted by Corwin, op. cit., p. 88.

the State. The importance of the latter case, as Professor Elliott[1] has remarked, is that the majority had an organic conception of society and felt that there was in some real sense an identity of interest between producers and consumers.

A more recent decision, however, shows that the Court is still far from having this organic conception of society, for in June 1936, by six votes to three, it declared unconstitutional the State of New York's minimum wage law which regulated payments to women laundry workers. This confirmed a decision made in 1923 when a minimum wage law of the District of Columbia was declared unconstitutional, but it had even wider implications. The N.R.A. and the Guffey Coal Act judgments had made it clear that the Court was unwilling to allow the Federal Government power to regulate labour conditions, but the 1936 decision on the New York Act seems to have made it impossible even for sovereign States to pass beyond the 'due process' clause and initiate labour legislation. The decision, as will be seen in what follows, has been of great importance also in influencing the 1936 Presidential election campaign, but its bearing on the Court's conception of sovereignty is bound to have a far-reaching influence on all American social legislation. Mr. Justice Stone, in handing down the minority decision, states the problem succinctly: 'It is difficult to imagine any grounds, other than our own economic predilections, for saying that the contract of employment is any the less an appropriate subject of legislation than are scores of others, in dealing with which this Court has held that legislatures may curtail individual freedom in public interest.' After the N.R.A. decision it was still thought that conditions of employment might be regulated by 'Little N.R.A.s' within the various States. Now this last hope has vanished, and it is agreed that a constitutional amendment is necessary before any further legislation of this kind can be passed.

A more doubtful case is the State legislation recently passed on unemployment insurance. Employers are usually required to contribute to a central pool out of which benefits are paid. It has been pointed out already that the Railroad Pensions Act was declared unconstitutional, partly for the reason that it contained this feature of compelling contributions to a common pool. On the other hand, in the past, State schemes for the

[1] W. Y. Elliott, *The Need for Constitutional Reform*, p. 172.

insurance of bank deposits out of a common fund maintained by State banks have been upheld. The question must for the moment remain in doubt. In any case it is subordinate to the wider problem of the constitutionality of the Federal Social Security Act, on which the continuance of most of the State schemes will depend.

The power of the States to interfere with the freedom of contract is undoubtedly greater than that of the Federal Government. This arises simply out of the fact that the States are deemed to be sovereign in their territories, while Congress has only specific powers delegated to it. Thus, when the processing taxes of the A.A.A. were declared unconstitutional, on the grounds that the regulation of agriculture was a matter for the States, it was implied that the States had such power of regulation. If we may judge from the Minnesota Mortgage Moratorium decision, this power may be considerable in times of emergency. Nevertheless in one sphere, that of the regulation of the currency, extremely wide powers have been granted to the Federal Government and recognized by the Supreme Court, though the favourable decisions have only been by bare majorities. Reference has been already made to the Legal Tender decisions, in the second of which the Court reversed its original decision that 'greenbacks', or treasury notes, should not be tendered in payment of debts. This second decision was confirmed, and its principles amplified by the five to four Gold Clause decision of February 1935, whereby the Federal Government was recognized as having practically unlimited powers over the regulation of the value of money. The important features of the majority judgment was that since only Congress had the power to fix the gold value of the dollar, contracts specifying payment in dollars of a fixed gold value were not valid, and had therefore to be fulfilled in current dollars. The Federal Government had, it was maintained, broken its own contracts with holders of federal debt, but suits to recover such 'losses' could only be expected to succeed if loss was actually proved. This part of the judgment is of no great practical importance. Indeed, Congress by joint resolution forbade such suits in the Court of Claims.

We come finally to the powers granted to the Federal Government under paragraph 8 of Article I of the Constitution.

'Congress', it is laid down, 'shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States.' This clause is referred to shortly as the 'general welfare clause'. The main question which arises is the extent to which the furtherance of the welfare of certain groups within the country—e.g. the farmers—can be included under 'provision for the general welfare of the United States'. Professor Corwin makes the interesting remark that 'so long as Congress has the prudence to lay and collect taxes without specifying the purposes to which the proceeds of any particular tax are to be devoted, it may continue to appropriate the national funds without judicial let or hindrance.'[1] The A.A.A. decision would probably require some modification of this statement, but nevertheless there appears to be some advantage from the constitutional point of view in merging all taxes in the central fund of the Treasury instead of ear-marking them for a specific purpose. This principle was followed in the revised Railroad Pensions Act, but it still remains to be seen whether this will fare any better at the hands of the Supreme Court than did the original version. The same principle has governed the drafting of the sections of the Social Security Act relating to old age assistance. Title VII, which lays down the taxes to be levied on employers and employed, has been formally separated from Title II, which prescribes the benefits to be received. But it is not yet certain whether the Supreme Court will recognize this rather abstract distinction. If it does not, Titles II and VII of the Social Security Act may share the same fate as the original Railroad Pensions Act.

As to the wider question of what constitutes the general welfare, judicial interpretations have usually been obscure, though the right of Congress to make appropriations for a very wide variety of purposes has been recognized. Special aid to agriculture—e.g. the provision of free seed—has been one of the commonest ways of providing for the general welfare by assisting a particular economic interest. The adverse ruling on the A.A.A. by a majority of six to three in January 1936 is the most important example of the Supreme Court's refusal to allow the extension of the concept of general welfare. The feature of the

[1] *The Twilight of the Supreme Court*, p. 176.

decision is its refusal to allow the levying of particular taxes the proceeds of which were used for purposes outside the boundaries of federal power. It is worth while to examine the decision in greater detail, as not only did it come as an unexpected blow to many constitutional experts, and to progressives generally, but it has roused a storm of protest in many parts of the country, and considerable speculation as to whether the time may not be ripe for a radical revision of the Constitution.

The purpose of the A.A.A. processing taxes was to raise money which could be handed over to farmers on condition that they submitted to certain forms of regulation by the federal authorities. The majority of the Court held that in the first place there was no evidence that the taxes were levied for the general welfare, and that, in any case, the expenditure of the proceeds forced farmers to submit to regulation, a matter in which the States, and not the Federal Government, had jurisdiction. The points made by the minority were that, on the one hand, no farmer was forced to submit to regulation, and he was perfectly free to refuse aid if he thought fit, and further that in the matter of regulation it was unreasonable to expect the Federal Government to give financial aid without attaching conditions to the grant. Carried to its logical conclusion, said Justice Stone speaking for the minority, the decision of the majority meant that while the Federal Government might make a financial grant to a body, it might not lay down the purposes for which the money should be spent. The minority further maintained that the prosperity of agriculture was a matter of vital importance to the general welfare, and that consequently the processing taxes were constitutional.

The majority of the Court seem to have based their case partly on State rights, partly on the fact that the regulation of the A.A.A. was quite a different matter from, say, gifts of free seed (even if those gifts were on condition that the seeds should be used for planting and not for cattle feed), and partly on the ground that the taxes and the subventions were connected with each other, and were not merged in the general revenues and expenditure of the Treasury. The minority, on the other hand, were willing to stretch precedents far enough to cover the A.A.A. On both sides eminent jurists found ample reasons to support their contentions. It is hard to avoid the conclusion

that the real conflict was one of general political and social outlook rather than of abstract legal argument.

The A.A.A. decision was a severe blow to progressives, but is nevertheless not likely to have the consequences imagined by some conservatives. It forbids a specific type of federal action; but it gives no indication that the Court is likely to reverse previous judgments and disapprove of types of legislation that have long been thought of as constitutional. The Tennessee Valley Authority decision, though limited in scope, showed that extreme conservative hopes were not to be realized. Only one judge declared that the sale of surplus electric current by the Federal Government was unconstitutional. The Court is in fact adopting a middle position, and it is extremely difficult to forecast what its future decisions are likely to be.

The most important constitutional issue of the next few months or years will in all probability be the Social Security Act.[1] There are those who maintain that the N.R.A. and A.A.A. decisions indicate that the Supreme Court is not likely to take up a tolerant attitude towards federal interference in social legislation, and that the system of compulsory old age insurance, financed by contributions both from employers and employed, may well be declared unconstitutional because it cannot properly be included under the concept of general welfare and because it violates the 'due process' clause. On the other hand, those sections of the Social Security Act which provide for direct federal grants to States (for certain old age pensions, mothers' pensions, maternity and child welfare, &c.) have a far better chance of being upheld by the Court. For many years percentage grants by the Federal Government have been made to States, notably for the construction of highways, though in no case has the Court consented to pass judgment on the constitutionality of the method. More doubtful are the 'tax offset' provisions of the unemployment insurance section of the Act, whereby an employer may escape up to 90 per cent. of the federal tax if he already contributes to a State unemployment insurance scheme. It may be noted, however, that the offset features of the federal inheritance tax have already been unanimously upheld by the Court.

[1] For a detailed discussion of this Act and the constitutional issues involved in it, see Paul H. Douglas, *Social Security in the United States*.

The constitutional position as regards State and federal social and economic action can now be briefly summarized. The States appear to have very considerable powers allowed to them, particularly when they can plead economic emergency, although it is likely, in view of the decision on the New York Minimum Wage Act, that these powers do not extend to the general regulation of wages and hours of labour. As far as State action is concerned, the main check to progressive social legislation will come not only from any decision which the Supreme Court may make, but also from their own unwillingness to pass such legislation, or their fear of competition from less progressive States. It is therefore as much a political and financial question as a constitutional one. As regards federal action, constitutional problems are obviously of greater importance, but one is led to suspect that the average American politician tends at times to blame the Constitution overmuch when his own immediate concern ought rather to be the reform of the party machine for which he is responsible. The very wide powers granted to Congress in the sphere of money and finance could, if properly used, effect a far greater measure of federal economic control than such grandiose attempts as the N.R.A. This is particularly true of taxation. 'The power to tax', said Chief Justice Marshall, 'is the power to destroy.' Later the Court amended this by saying: 'The power to tax is the one great power on which the whole national fabric is based. . . . It is not only the power to destroy, but also the power to keep alive.' The A.A.A. decision has not fundamentally altered the validity of this conception.

The question of the revision of the Constitution is one on which there has been much discussion without a proper regard to political realities. When all is said and done, it is the judicial interpretations that matter and not the bare skeleton of the abstract law. Nevertheless the impasse in social legislation brought about by the New York Minimum Wage decision of June 1936 has compelled both the major parties to sponsor measures of constitutional reform in their 1936 election programmes. The Republicans are seeking greater freedom of State action, while the Democrats are seeking to extend federal powers—thus reversing the traditional roles of the parties.

In spite of the set-backs he has received at the hands of the

Supreme Court, President Roosevelt is unwilling to make constitutional revision an issue of the election of 1936. This is not, as some progressives think, merely the result of political astuteness. It is in the long run the best way of securing judicial approval of social legislation. For in the first place, like every other human institution, the Supreme Court moves with the times, and has nearly always shown itself ready to accede to an undoubted national demand. In the second place it is more than probable that vacancies in the Court will occur during the next presidential term, and constitutional decisions of the next decade may depend very largely on the new appointments which will be made. To politicians the verdict of the Beards[1] on the Supreme Court must seem to be the realistic one: 'A tribunal not composed of Delphic oracles, but of statesmen and politicians appointed by the President and the Senate.'

[1] *The Rise of American Civilization.*

IV

THE PROBLEM OF ADMINISTRATION

IF, as has been here suggested, the growth of collective action in the United States is an inevitable result of modern social and economic needs, the problem of administrative efficiency assumes an importance which it has not had in the past. In the early years of the Republic the scope of government action was so limited, and the resources of the country apparently so inexhaustible, that efficiency and economy in administration were very naturally subordinated to the establishment of a system rigidly based on the abstract principles of the Constitution. But to-day, when the securing of the rights to life, liberty, and the pursuit of happiness is so inextricably bound up with the function of government itself, the problem of administration becomes an urgent one. It can best be considered from two points of view, which are in fact mutually dependent on one another. First of all there is the whole question of finance on which the success or failure of government action must depend. In the second place there is the question of administrative organization and personnel, which is dependent so much on the spoils system and the growth of the political parties.

A few preliminary illustrations in the field of local government will suffice to show the nature of the difficulties which confront enthusiasts for administrative reform. President Roosevelt himself has said:[1] 'Local government is the instrument by which very essential action in the next few years will succeed or fail', and goes on to quote the following facts. In New York State there are about 13,544 local government units. County and town governments have 15,000 officials, mostly with constitutional status and elected by popular vote: in the 55 counties outside New York City and the suburban area there are 11,000 tax collectors who collect only one-sixth of the total property tax of the State, the remaining five-sixths being collected by 200 officers. The figures for Chicago and Cook County, Illinois, are even more remarkable, where within the county as a whole

[1] Franklin D. Roosevelt, *Looking Forward*, p. 72.

there are over 400 separate local government bodies, each with powers to levy taxes and to borrow money. In varying degrees the same is true of every part of the country.

Even apart from the details of local government in cities and counties, the federal system itself is a costly one. Each of the forty-eight States is sovereign, and each has to maintain the expensive paraphernalia of sovereignty, a Supreme Court and two legislative assemblies.[1] For great Commonwealths such as New York, Pennsylvania, and some others, this burden is not in itself excessive. But at the other end of the scale we find the State of Nevada with less than 100,000 inhabitants saddled with the upkeep of a complex judicial and administrative machinery centralized in the State capital, Carson City, a desert township of 1,500 inhabitants; while New Hampshire, with a population of a million and a half, has a lower legislative chamber of 422 members. These traditional trappings have, of course, their parallel in every country, and not least in Great Britain. In the United States, however, they remain more closely bound up with the legislative and administrative machinery, and even if the cost in dollars is not always very considerable, the cost in efficiency is a real burden.

But these burdens, which are part of the Federal and State Constitutions themselves, are by no means the main difficulty. If all Federal and State executives and Civil Servants were efficient and held office through merit, and if all State judiciaries were completely free from suspicion of corruption, the federal system itself would be a constitutional luxury which the nation could afford. The system of political appointments, usually known as the 'spoils system', and of elected executive and judicial officers is by far the most important barrier to administrative and financial reform, and indirectly, therefore, to the attainment of the 'more abundant life' of which President Roosevelt so often speaks.

The introduction of the spoils system in a thorough-going manner dates from the early nineteenth century. The extension of the frontier made popular the view that any man with the right principles could be an efficient administrator—a natural

[1] With the exception of the State of Nebraska, which recently adopted a constitutional amendment adopting a uni-cameral, in place of a bi-cameral, legislature.

one for any ardent believer in extreme democracy. Quite apart from the spoils system some remnants of this attitude survive in the minds of most Americans to-day. Thus, when Mr. James P. Warburg writes '. . . barring an extreme radical or an extreme reactionary, almost any one would be better than Mr. Roosevelt . . .'[1] he is unconsciously voicing the old democratic tradition. Between elections by lot in ancient Athens and appointment by patronage in modern America there is very little real difference from the point of view of efficiency. It must be admitted, however, that a century ago technical problems of administration were few, and there is no evidence that the work of government was carried on any less efficiently than before the introduction of the system. It was probably preferable to the British system of a century ago under which offices were so often simply purchased. Only it so happened that the United States never experienced such wholesale reforms of the Civil Service as were put through in Britain, France, and Germany, so that her administrative machinery has not advanced in step with her economic development. In modern times the objection to the spoils system is much more important just because governments do not and cannot adopt a *laissez-faire* attitude to social and economic problems, and its officials can no longer be amateurs. This lack of professional training has long been recognized as one of the main faults of American diplomats, but to-day the same trouble arises in most of the Departments of State in which there are political appointees.

By the time of the Civil War the spoils system was universal both in federal and in State politics, and the post-war reconstruction gave a great impetus to its exploitation by the young Republican Party. From this period dates the conventional control of the Senate over a great many matters of federal patronage. 'By this convention', says Mr. D. W. Brogan,[2] 'the major federal patronage of a State, represented in the Senate by one or both Senators of the party in power, was the perquisite of the Senators. . . .' This alone would be sufficient to account for the remarkable degree of power exercised by the

[1] In *Hell Bent for Election*, p. 12.

[2] D. W. Brogan, *The American Political System*, p. 187. The writer is deeply indebted to Mr. Brogan's book, which has been aptly described as 'the most illuminating treatise on American government since the late Lord Bryce's famous volumes of fifty years ago'.

Senate in the American political system, in contrast with that of second chambers in other countries. It has meant that a seat in the Senate is the goal of most successful politicians, and that Senators are usually strong-minded men with a full sense of their own political power. This fact, combined with the two-thirds majority rule, has had, for example, interesting repercussions on international relations, since the Senate has to confirm all treaties. Presidents may sign treaties and conventions, but because at least one-third of the Senate often has a mind of its own, and is not afraid to use it, such treaties are frequently altered or rejected.

As regards Federal Government service, the spoils system suffered a permanent setback by the passing of the Pendleton Act in 1883 under President Arthur, which provided for examinations in various administrative branches. It is to President Cleveland's merit that he continued to carry out Civil Service reform when his party was returned to power in 1885 after twenty-four years of opposition. Mr. Brogan, writing in 1932, gives 400,000 as the number of federal officials who were then appointed by examination and protected against arbitrary removal, but the plums are still apt to be reserved for favourites of the party which is in power. Unfortunately the Civil Service has never yet become a profession in the real sense. This fact, even more than the scale of salaries offered, is probably the main reason why government service has not attracted its due proportion of the country's highest talents. There was, however, some reversal of this tendency at the beginning of President Roosevelt's term of office, partly because of the scarcity of openings elsewhere, and partly because of the prospects offered by the new Government agencies which were being created. The report of the Commission of Enquiry on Public Service Personnel has recently made some important suggestions regarding the problem of recruitment, but it cannot be confidently said that the prospects are much more hopeful to-day than before.

Indeed, under the New Deal there has been a very distinct tendency to revert to the method of non-permanent and political appointments, although in certain branches considerable efforts have been made to extend the merit system. In some degree this was inevitable. The very speed with which Government

agencies were created made it practically impossible to ensure that the new appointees should have administrative experience. In the first few months, nevertheless, strenuous efforts were made by the President to ensure that most appointments were made on merit. There was still a large amount of 'normal patronage' to be distributed—Post Office appointments, &c.—on which the rank and file of Democratic politicians in Washington were concentrating their efforts, as is always the case at the beginning of a presidential term. But as soon as office-seekers all over the country began to realize that there were federal jobs to be had not only in the Post Office but in bodies like the P.W.A., the F.E.R.A., and the like, pressure was brought to bear upon Senators and Congressmen in Washington. So many Departments of Government had hitherto been reserved to the States that federal patronage over the country as a whole was largely concentrated in the Post Office, and to a lesser extent in the Treasury. The New Deal opened up new fields to conquer.

In the establishment of the new staffs there were consequently two forces at work in opposition to one another. On the one hand there were the President's technical advisers, who often knew little or nothing about the political game, and merely wanted to secure efficient personnel for the economic and social experiments that were being started. On the other hand there were the political forces in and out of Congress on whom the President had to rely for the passing of necessary legislation. If by appeasing a few Senators here and there the President could secure the safe passage of a vitally important New Deal bill, he could hardly be blamed for doing so. The method is the normal one of both parties, and has its parallel in most democratic countries. Indeed, if the matter is viewed realistically, it is remarkable to what extent the President was able to make important non-political appointments in the face of political pressure. Finally, the Civil Service bureaucracy itself had to be reckoned with as, under the plea of upholding the merit system, it was sometimes able to exclude competitive outside talent.

With regard to new appointments in Washington itself, a reasonable enough compromise was reached between the systems of merit and of political patronage. A method often adopted was that the applicant was chosen on his merit from a list of

politically approved persons. A rather better one was making the appointment on merit subject to the endorsement of a Democratic Party official in the applicant's State or city. Both these methods were in common use in filling posts connected with the N.R.A., the F.E.R.A., the A.A.A., and other departments and agencies in the capital. No doubt a great many appointments were also made irrespective of party affiliations, and in fact some high posts were even filled by Republicans.

It is impossible to make any general statement as to the methods adopted in filling new posts in the country at large. It is certain that in a great many areas the basis was frankly a political one, and the central Government was too weak to stand up against State and local party machines. In some areas Republicans, or progressives (as in the State of Wisconsin), were often more enthusiastic about the New Deal than Democrats, and this served somewhat to leaven the Democratic lump, but on the whole the old spoils system remains firmly entrenched. One case may be cited, which aroused considerable comment at the time and which illustrates the kinds of difficulty in which such a system is always involved. The 'Republican-Fusion' administration of New York City under the 'progressive' Mayor La Guardia, sought a federal grant in aid of the building of the Triborough bridge. The administration in Washington expressed its willingness to give the grant, but only on condition that Parks Commissioner Moses—who in 1934 was Governor Lehman's Republican opponent in the New York State elections—was not on the board supervising the work of construction. Commissioner Moses is known as a most efficient administrator, and there was every reason to suppose that he would have been admirably suited to the job. Nevertheless, on apparently personal grounds, Washington opposed him. The fact that the objections to Commissioner Moses were personal rather than political made this dispute even more unfortunate than others.

Yet it would be unreasonable to exaggerate the evils of political appointments. No doubt when conditions are fairly stable and government staffs are not increasing too rapidly, appointments on the basis of pure merit are most desirable. On the other hand, when government activity is fast expanding and far-reaching experiments are being made, it is far safer in some cases to require that new appointees should at least be

favourably inclined to the experiments on which they are to work. This applies at any rate to many of the higher posts in the agencies created by the New Deal, and, given the traditions of the spoils system, of which all parties approve, the selections of the President can be defended against many of the attacks of his Republican opponents. When the appointment of Mr. Eccles to the chairmanship of the Federal Reserve Board is criticized as being 'political', it is safe to say that the only appointment which would be considered 'non-political' by the Opposition would have been that of a man who was radically opposed to the Administration's banking and financial policy. In party politics one's own side always acts impartially and with a full sense of the public welfare, while the motives of one's opponents are always 'political'. Meanwhile it must be noted that in the 1936 election campaign both Republicans and Democrats are pledging themselves to Civil Service reform. The former wish to extend the merit system to all posts up to that of Assistant Secretary, while the latter would exclude from the merit system only those public servants concerned with the formation of policy. This last proviso is, of course, understandable when far-reaching social and economic reforms are contemplated.

As far as past records of political appointments go, the Republicans and the Democrats appear to be perfectly similar. Reference to particular examples of political patronage during the office of one party may be made for the sake of illustration without any implication that one party is better or worse in this respect than the other. The spoils system does not depend on the wickedness or corruption of individual men, even though some of its most unpleasant developments may have been fostered by men like Boies Penrose or 'Boss' Tweed. It depends primarily on the organization of party politics and their influence on the relations between the President and Congress. In State and local politics the causes operating vary from district to district. For the present purpose it will suffice to concentrate on the national aspects of party organization and how it reacts on the efficiency of federal legislation and administration.

The absence of any difference in fundamental principles between the two main American political parties has always seemed peculiar to foreign observers. In European democracies,

parties on the Right and Left have been the rule,[1] held together loosely or closely as the case may be, but showing some degree of unity on certain social and economic programmes. In the United States it is otherwise. Republicans and Democrats cannot be classed as Right and Left; the Left Wing of the former overlaps not with the Right but with the Left Wing of the latter, and in both parties all shades of political opinions are to be found. The Democrats, it is true, regard themselves as the guardians of the Jeffersonian tradition of democracy, while the Republicans have usually claimed to be the party of economic progress and (till recently) of prosperity. Nevertheless, except in the older States, the differences between them seem unimportant by European standards. The Democratic Party may be traditionally the low-tariff party, but it has never been over-enthusiastic to pull down this fundamental prop of the American business system. The Republicans are usually thought of as being the supporters of federal as against State rights, but it has been under Democratic Presidents that the central power has been most extended. Yet there is no country in the world where party loyalty is so important and where changes in party affiliations have till recently been so rare.

Perhaps the most convincing reason for this is that, with the exception of the old Federalists, Americans have never regarded the State with the reverence with which it has been regarded in other countries. This is partly due to the federal system itself, and partly to the expanding character of American economic and social life, which have given rise on the one hand to an extreme regard for the rights of the individual as against any form of authority, and on the other hand, to a pluralistic conception of sovereignty itself. The township, the State, the United States—all have their own powers and their own field of action, and their function is to assist the individual rather than to provide some higher organization in which his interests can be merged. The party is therefore a kind of club, whose business it is to ensure that the various governments are controlled by men who will 'look after' the interests of its members,

[1] At any rate since the War, though in Great Britain the Irish question brought confusion to politics, and Conservative and Liberal were not necessarily synonymous with Right and Left in the last quarter of the last century.

and it becomes strong when the interests of its members can be combined not for general purposes, but for specific objects, which can be simply calculated to produce definite and tangible benefits. To secure that a highway shall be built to a town, or that a tariff shall be placed on such and such an article—these are the objects gained by capturing the State or the federal legislatures, and the success of the party will depend on whether it can effect a working bargain between those who want the highway and those who want the tariff. In an individualistic system the sole requirement demanded of a government is that it shall do certain specific things which further the interests of individuals. As to more general principles, individuals should be left to look after themselves.

This absence of interest in general principles also depends very largely on the economic sectionalism of the country and the variations in cultural and social conditions. Even if they wear the same kind of overalls, the 'poor white' farmer on a Georgia hill-side, the lumberjack in northern Oregon, and the steel-worker in Pittsburgh live in quite different worlds. Lack of homogeneity makes common principles a difficult basis for political organization, but nevertheless alliances can be made. The Southern landowner and the slum-dweller of New York may appear to be an ill-associated couple, but they are content to ally themselves for their mutual advantage, and the same is true of the Wall Street banker and the small farmer of Kansas. This is because the vast majority of problems are fought out in local and State politics, so that the real differences of outlook between the rich planter and the Irish navvy are never truly brought to light. Each of them has a few objectives in national politics, and because these objectives are not too numerous and not too wide in scope, the alliance between the two becomes possible. Hence it comes about that in some States, like New York, the country is Republican and the town Democratic, while in those farther South the backbone of the Democratic party is in the rural areas. It is not surprising that an issue like Prohibition cut right across party divisions, but it is perhaps more significant that the same thing applies to nearly all important national issues.

The basis of the party, therefore, is local or, rather, regional, and the aim of its national managers is to form as wide an

alliance as possible between regional groups. Historically the political conflict has consisted in the efforts of the North or the South to win the allegiance of the West. Before the Civil War, victory usually went to the South, and after it to the North. To-day in a modified form the same conflict continues, and success goes to the side which is most successful in carrying through and maintaining the alliance. In the past seventy-five years the North has usually won because it represented the forces of expansion, but there are signs that this era has now come to an end. Differences in regional interests are giving way to wider economic antagonisms, and real political issues are arising which will inevitably divide the country on the basis of political principle rather than of mere opportunism. But that time has not yet arrived, and meanwhile the present party system has to be operated as well as it can be.

The absence of any unifying principles in the American parties means that the President is not the leader of the party in the same sense as is a British Prime Minister. He is adopted at the party convention because he is likely to hold together the alliances of local interests better than any other candidate, and when he reaches Washington, the local interests in the shape of Senators and Congressmen do their best to ensure that he serves their purposes. If, as is quite often the case, the President is a man of real energy and determination, his task is to carry through his own policy as best he can by cajoling or browbeating his supporters. Through his control of patronage he may be able to get his own way easily enough during his first year of office, but in the second year Congress, with an eye on the mid-term elections, becomes restive, and in the third and fourth years it may be controlled by the Opposition party. If the President's policy is broadly supported by the bulk of the nation, his difficulties will not be great, since Congress will always be chary of opposing public opinion. This makes patronage less important so far as larger questions of public policy are concerned—though its influence on smaller decisions is enormous. No matter how skilfully President Hoover had distributed patronage in 1931 and 1932, he could never have gained the support of Congress, since public opinion was opposed to him. Similarly in 1933 and 1934 Congress was bound to support the general policy of the New Deal—though not

necessarily any particular measures—on account of the President's personal prestige in the country.

The whole problem is made infinitely more difficult by the fact that the President is an executive officer and cannot initiate legislation. If he has a programme to carry through he has to induce the majority leaders in the Senate and the House of Representatives to introduce the necessary Bills and get them passed, and to do this pressure and persuasion of all kinds will be necessary. The chief obstacle may be, as often as not, mere apathy. Members may not be actively opposed to legislation, but unless some enthusiasm is whipped up, Administration measures may be dropped or blocked to give place to the favourite piece of legislation of some powerful or popular Senator or Congressman. Finally, even if an Administration measure survives committees and is finally passed by both Houses, it may have had tacked on to it sometime during the course of its career some irrelevant rider, embodying the efforts of some member to obtain the passage of one of his pet schemes.

Once a measure is passed by both Houses, the President may veto it, but he must veto it as a whole. He has, therefore, no power to delete riders from an otherwise desirable Bill, nor may he sign certain parts of a Bill and veto others. If his rights of veto were modified to give him these powers, the system would undoubtedly benefit very greatly, but, as the position is at present, even a powerful President is to a large extent at the mercy of the whim of Congress. In foreign affairs the President's initiative is further weakened by the Senate's power of veto over foreign treaties. Indeed, the whole legislative organization appears to be calculated to make the passing of legislation as difficult as possible. This is no doubt the object of the system of checks and balances, but modern conditions require something rather more efficient. Legislation would also be improved if Cabinet Ministers were allowed to appear in the Senate and in the House to answer questions. This could easily be brought about by an alteration of Standing Orders.

The significance of the spoils system in the Federal Government can now be appreciated. It is an important method, particularly in times of crisis, whereby the President can wield power over Congress and secure the passage of the necessary legislation, and without it there would be legislative chaos.

Reformers and European critics have denounced the system as being corrupt and as leading to inefficiency, and have put the blame for it on the politicians who operate it, but, so long as the parties are organized on the basis of alliances between particular interests rather than of common political principles, the spoils system performs a useful and necessary function. It could only be dispensed with if, for instance, the President was given power to dissolve Congress, as has been recently suggested by Professor Elliott,[1] but it is exceedingly unlikely that a constitutional amendment of this kind could hope to secure a passage.

During the present presidential term the Administration has been more than usually successful in securing the co-operation of Congress. One reason for this, as suggested above, has been the very large increase in the number of federal posts which could be used as patronage. Another reason has been the skill with which the President has secured the permanent support of various groups by suitable concessions. Thus the silver policy of the New Deal may be attacked on a number of grounds, but even if its harmful effects are proved, it did at any rate gain the support of a dozen or more Senators for the more important parts of the programme. But perhaps the most significant cause of the President's power has been the support he has obtained directly from the country at large and his method of appealing to the people over the heads of Congress through fireside radio talks, and so on. It was the sign that there was the beginning of a political movement based on an agreement on broad principles of policy, and that, however firmly the Democratic Party might cling to its old methods of organization, 'The President's Party' was something to be reckoned with. This fact governed the sweeping victories of 1934, and is still a strong force in 1936. If it leads to a realignment in American politics on fundamental issues, the system will benefit whatever the actual electoral outcome, but the old party forces are strong, and look like surviving for some years to come. The union of the conservative elements on the one side and of the progressive elements on the other is still far from complete.

An important result of the President's power in the country has been the great increase in the amount of discretion allowed to him by Congress. Not only in the N.R.A. but in a great many

[1] W. Y. Elliott, *The Need for Constitutional Reform*, p. 232.

of the New Deal measures, broad legislation has been filled in by presidential decree or administrative order. This tendency has been denounced by the Opposition, but it is hard to see how an increase in the power of the executive is to be avoided if the sphere of federal activity continues to extend. The Supreme Court may be expected to check any too rapid increase in this power. It has already shown signs of disapproving of the 'new despotism', for in the N.R.A. decision Congress was rebuked for delegating to the President powers which belonged to the legislature alone. However, there is a growing recognition of the danger of putting obstacles in the way of the efficient operation of agencies of the Federal Government.

With the political system as at present organized, it is clear that any experiment such as the New Deal is bound to meet with almost insuperable difficulties, and critics of its workings must always bear in mind that at the moment the old machinery cannot be quickly changed. In this sense the problem of the United States is a political rather than an economic one, and the failure of the New Deal has been mainly political. Meanwhile there is one important economic consequence of the faults in the political system which requires closer analysis. The American experiment may still split on the rock of finance, and it is at any rate certain that unless the budgetary problem is somehow solved the present trends in the direction of social reform may be abruptly reversed.

V.

REVENUE AND EXPENDITURE

AMERICAN democracy has never worried overmuch with problems of government finance. States and cities have, with a few notable exceptions, tended to live from hand to mouth, and the average citizen has come to view complacently the bankruptcy of wealthy communities, unless he happens to be an official or a bondholder. It is always a matter of surprise to Englishmen that the financial condition of New York City and Chicago is apparently so much worse than that of our own depressed areas, though it must be remembered that local authorities in Great Britain are in receipt of generous grants-in-aid, while American cities have had mainly to stand on their own feet until very recently. Yet the problem is not insoluble. Given reasonable efficiency and honesty, present services could normally be paid for out of the revenues from the property tax and the various indirect imposts so popular with most State Governments. This does not mean that the systems of local taxation are ideal; but, it is suggested, the problem lies more on the side of expenditure than on that of revenue if we leave out of account the problems arising out of relief payments and out of the recent Social Security Act. The reason for this omission will appear in what follows.

The Federal budget has till recently presented no such difficult problems. The activities of the Federal Government were strictly limited, while the tariff system provided good revenues in the shape of customs duties. Even the debt of $25,000 millions, contracted mainly during the World War, had been reduced to $16,000 millions by 1930, in spite of increased expenditure in pensions, agricultural aid, grants for road building and public works, and subsidies to the Post Office. But as soon as the full force of the depression was felt, revenue rapidly declined and large deficits were the rule. At the present time ordinary expenditures are balanced by revenue, while emergency expenditure, amounting to between $3,000 and $4,000 millions in recent years is met by borrowing.[1] The

[1] The emergency budget is now further burdened with additional payments

emergency items consist of relief payments, expenditures on public works, aid to agriculture and industry through the R.F.C., and till recently the A.A.A., and grants for conservation purposes. It is reasonable to assume that no marked economies can be made in the ordinary budget. An additional item has recently been added, namely, the immediate payment of the 'veterans' bonus', but this expenditure is in reality of an anticipatory and non-recurring nature, provided that the 'veterans' do not make further successful demands on the Treasury.

The size of the deficit is certainly striking, but the position is hardly as serious as it looks. Expenditures by the R.F.C., for instance, are mainly by way of loans to finance and industry, the bulk of which will be recovered if prosperity returns. The chief permanent problem is that of agriculture and relief, and for these items money will somehow have to be found. Though a great deal has been made of the payments to farmers, the total is comparatively small compared with expenditures under the general heading of relief, which includes grants under the Federal Emergency Relief Administration, the Public Works Administration, and conservation schemes such as the Civilian Conservation Corps. In fact, taking the long view, the main budgetary problem is how much to spend on unemployment, and how to raise the necessary money. To this must be added the various grants under the Social Security Act which are not financed by taxes levied on employers and employees.

How can the country best provide for the unemployed and the aged? This is, in the long run, the real budgetary problem. As the Social Security Act will at best not be financially operative for some years to come, relief payments, whether direct or in the form of public works or conservation schemes, will have to come from the general revenues of the Treasury or from the receipts of the States and local governments. The present methods of providing relief are certainly costly, but the first thing to be decided is the general principle of how the money is to be raised. At the moment it is being borrowed, but pre-

to agriculture. Until the A.A.A. decision of the Supreme Court, the processing taxes and the corresponding payments to farmers were both part of the ordinary budget. The latter will now presumably appear in the emergency budget.

sumably this cannot last for ever, and the President is now aware that some permanent way of taxing for relief purposes (including agricultural relief) must be worked out.

Some political leaders have suggested that a considerable part of relief payments should be borne by the States, local communities and charity organizations,[1] and even under the New Deal this method has to some extent been adopted. The difficulty is that, owing to the reluctance or constitutional inability[2] of most States to levy local income taxes, local relief payments have to be met by sales and other indirect taxes which fall very heavily on the poorer classes. Another objection to leaving relief to the States is that the poorer communities would be terribly overburdened. If the view is taken that unemployment is a social phenomenon, the burden of its relief should largely be borne by the more prosperous classes and sections of the country. Already this principle has been recognized by differential federal relief grants. Thus in 1934 the Federal Government bore up to 100 per cent. of the cost of relief in such poor States as South Carolina and only 10–12 per cent. in the case of Connecticut. Some such system will have to continue, if only from political necessity.

Because the States and cities have to rely almost entirely on the property tax and indirect taxes, federal taxation should in the main be direct, if the taxation system of the country as a whole is to be anything but regressive. This is gradually being recognized, though the implications have not yet been worked out; and indeed most of President Roosevelt's recent efforts to raise new taxation have been directed towards the income tax and the corporation profits tax. The very heavy indirect taxes to be levied under the Social Security Act are unfortunate exceptions to this principle, and it may be questioned what real economic value social security is, if it is to be paid for by its beneficiaries. Consequently radicals and progressives are likely to press for a drastic revision of the financial clauses of the Act in order to ensure at least that the expenditure on unemployment insurance shall be met by increases in direct federal taxation. They are likely to point to Great Britain as an

[1] *There is One Way Out*, a pamphlet by Lewis W. Douglas, former Director of the U.S. Budget.

[2] Certain State Constitutions forbid the levying of income taxes, as indeed did the Federal Constitution until the ratification of the Sixteenth Amendment in 1913. See Appendix I.

example of a country where this has been a guiding principle.

On the other hand, the wealthy classes maintain that they are already taxed very highly, and that the increase in surtaxes of 1935 raised the rate on the very highest incomes above that of Great Britain. Whether or not confiscatory taxes on millionaires are desirable, the fact remains that they cannot yield very much more to the Treasury even if the tax rate is raised still further. From the revenue point of view the most hopeful method would be to combine high taxation of the millionaires with raising the rates of tax on the ordinary well-to-do. Compared with other countries these latter rates are at present remarkably low, and incomes between $5,000 and $50,000 enjoy a comparative immunity from taxation which is in marked contrast with the heavy burdens of indirect taxation borne by the poorer classes. A better graduated scale of direct taxation might well double the receipts from this source without inflicting undue hardships, and additional revenue might be raised if constitutional powers were obtained to tax securities at present tax-exempt. If inheritance taxes were also levied on these principles, there would also be corresponding gains from this source.[1]

Indeed, there seems to be no inherent reason why relief, even on the present scale, should not be paid for out of tax revenue, though some curtailment might be necessary in the more expensive public works and conservation schemes. The national income is so large, that, given the will to tax systematically and adequately, federal expenditure of, say, $6,000 millions annually, could be covered without any very great economic difficulty. In recent years expenditures have been approaching $7,000 millions, but this sum includes R.F.C. and P.W.A. grants, many of which are in the nature of capital payments. These could be eliminated without reducing the sums actually received by the unemployed, if it was considered desirable to abandon the programme of stimulating recovery by capital expenditure. If, on the other hand, the programme is to be continued, there should be a true 'capital expenditure' budget, on the Swedish model, which would be liquidated as recovery got under way.

[1] For a fuller discussion of this problem and for detailed figures of emergency expenditures see *An American Experiment*, by E. M. Hugh-Jones and E. A. Radice, chapter vi.

If the country really desires relief expenditure on a scale which would involve a $6,000 millions Federal budget, the means could be forthcoming, but only provided that the principle of heavy direct taxation is accepted. The advocates of economy, however, in pressing for an immediate and drastic reduction in federal expenditure take a realistic view of the situation which progressives have got to meet in an equally realistic manner. Experts are now in fundamental agreement that 'recovery' will not eliminate the need for relief payments and that to include them in an 'emergency' budget is unsound, but Congress is still unwilling either to reduce them or to raise adequate additional taxation. The average politician often belongs just to that class which in theory should bear a greater burden of taxation, and they are naturally unwilling to alienate the prominent men in their local communities who also belong to the same class. This is yet another example of the unfortunate result of the local basis of American party politics. On the other hand, any cutting of relief expenditure would, for obvious reasons, mean the loss of large blocks of working class votes.

There is therefore a real danger that, in order to balance the budget, measures may be passed which will perpetuate an unsound system of public finance. The temptation to throw the cost of relief on to the States and cities is very great, but it would mean the indefinite postponement of solvency in local government finance, which would deprive the country of vital public services, and would, taking the long view, be more costly to business than an increase in national taxation. If the poorer States exert political pressure in Congress to force the Federal Government to take a greater share of financial responsibility for the cost of relief and social security, it will be all to the good. Solvency in local government is in reality the prime necessity, and if there is a genuine desire for the extension of relief and social services, their cost must ultimately be borne by an increase in direct taxes. Politically the choice between a reduction in expenditure and an increase in taxation will be a difficult one, but it is one which has got to be made. Great experiments in social legislation always require sacrifices from some section of the community; if these sacrifices are not forthcoming, the experiments have to be abandoned.

CONCLUSION

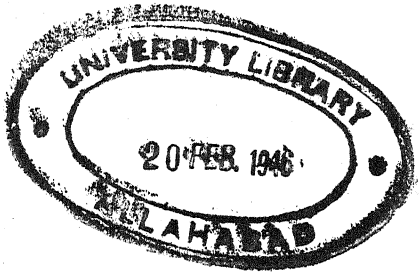
THE United States is now (August 1936) preparing for a Presidential Election that may well have even more decisive consequences than that of 1932. The immediate issues are simple enough. The Democratic Party favours the extension of federal power, particularly in social legislation, and believes that the main financial burden should be shouldered by the central treasury. The Republicans, more suspicious of radical doctrines, would prefer to leave reforms to the several States, and believe that their powers should be somewhat strengthened in the matter of legislation. Once again the conflict takes the form of centralization versus decentralization, as it did a century ago. This time, however, it is the progressives who favour federal action, while the conservatives uphold the sovereign power of the individual States.

The progressive forces are coming to realize that any thoroughgoing schemes for social reform must be on a federal basis if the traditional conservatism of the more backward States is to be overcome. Hitherto they have not sufficiently reckoned with inherent constitutional difficulties, and have failed to realize that even mild measures of social planning are incompatible with a federal system founded on the assumptions of economic individualism. If this issue is clearly put before the people, and if the Democratic Party can rid itself of its local sectionalism, a real liberal party may emerge. Similarly, the Republican Party cannot become a truly conservative party, differing from the Democrats in questions of broad principle, until its leaders recognize that national interests as a party basis are something more important than the interests of business. At the moment they seem to be willing to make slight modifications in the doctrine of economic individualism in favour of wider action on the part of the States. If the full implications of this step are realized, and are made part of a coherent political philosophy, conservatism may be able to offer constructive opposition to the liberal forces which have lately been in the ascendant.

Nevertheless the old party systems still have much life in them, and it may be some time before political divisions

become matters of principle rather than of opportunism. The Democrats, if successful in the election, may be content to push through piecemeal progressive measures, without having the courage to introduce any of the more fundamental reforms which a truly radical programme requires. Similarly, a Republican victory may encourage conservative business leaders to revert to the old order of things, and to forget that some yielding up of vested rights will be necessary if the country is to move with the times.

To judge from the election platforms, both the Democratic and Republican Parties have adopted programmes which may seem to give the appearance of solving the country's immediate problems, but any recovery on the basis either of New Deal optimism or of Old Deal complacency is likely to be short-lived. It may require yet another depression to convince the American people that the system under which they have lived must adapt itself in all its departments to the conditions of the modern world.



APPENDIX I

THE POWERS OF CONGRESS, THE PRESIDENT, THE SUPREME COURT, AND THE STATES

(Extracts from the Constitution and the Articles of Amendment)

THE CONSTITUTION, 1787

ARTICLE I

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 7. (1) All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

(2) Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections, to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. . . .

(3) Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power:

(1) To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform through the United States;

(2) To borrow money on the credit of the United States;

(3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

(4) To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

(5) To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

(6) To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

(7) To establish Post Offices and post Roads.

(11) To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

(12) To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

(13) To provide and maintain a Navy;

. . . (15) To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

(16) To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

. . . (18) To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. . . .

(4)[1] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

(5) No Tax or Duty shall be laid on Articles exported from any State.

. . . (7) No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Section 10.

(1) No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law,

[1] See XVI Amendment.

or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

(2) No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

Article II

Section 1.

(1) The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years . . .

Section 2.

(1) The President shall be Commander in Chief of the Army and Navy of the United States, and of Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

(2) He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law. . . .

Article III

Section 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. . . .

Section 2.

(1) The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, or other public Ministers and Consuls;—to all Cases of admiralty and maritime

Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

(2) In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Article V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by the Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent shall be deprived of its equal Suffrage in the Senate.

AMENDMENTS

Article X (1791)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people.*[1]

Article XVI (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

[1] Author's italics.

APPENDIX II

PRINCIPAL ACTS OF CONGRESS AND DECISIONS OF THE SUPREME COURT 1933–6

(The dates printed are those in which the Acts were approved by the President and became effective.)

1933

Mar. 9 **Emergency Banking Act** passed. This dealt with the immediate problems arising out of the closing of the banks.

„ 31 **Unemployment Relief Act** passed, creating the Civilian Conservation Corps.

Apr. 19 Embargo placed on exports of gold.

May 12 **Agricultural Adjustment Act** and **Emergency Farm Mortgage Act** passed. This was the beginning of the policy of crop restriction, processing taxes, and benefit payments to farmers. Part of the Act gave the President wide powers to inflate the currency.

„ 12 **Federal Emergency Relief Act** passed. This set up the F.E.R.A., the first federal organization for the provision of relief.

„ 18 **Tennessee Valley Authority** created by Act of Congress with powers to develop the navigation of the Tennessee river, to provide electricity, to build dams, and generally to conserve the natural resources of the district.

„ 27 **Securities Act of 1933** passed. This established new rules governing the issue of securities and the publishing of prospectuses.

June 5 Joint resolution of Congress passed, abrogating the gold clause in contracts.

„ 13 **Home Owners' Loan Act** passed, to give loans to private householders for the repayment of mortgages and the purchase of houses.

„ 16 **Farm Credit Act** passed to give new loans to farmers on easy terms and to refund existing loans.

„ 16 **Emergency Railroad Transportation Act** passed, setting up a Federal Co-ordinator of Transportation to promote more economical working of the railway system.

„ 16 **Banking Act of 1933** passed. A deposit insurance scheme was set up and various amendments were made to the Federal Reserve Act.

June 16 **National Industrial Recovery Act** passed. This was the most important of the Administration's industrial measures. It set up machinery for the establishment of codes of fair competition in industry and called for a large programme of public works.

Nov. 8 Civil Works Administration set up.

1934

Jan. 8 The Supreme Court, by 5 votes to 4, upheld as an emergency measure the law of the State of Minnesota which established a moratorium on foreclosures of mortgages.

„ 30 **Gold Reserve Act** passed. This concentrated all gold stocks in the hands of the Treasury and gave the President power to fix the gold value of the dollar anywhere between 50 and 60 per cent. of its former parity ($20.67 an ounce of gold). The rate chosen, and since maintained, was 59·06 per cent. of the former parity ($35 an ounce). A stabilization fund of $2,000 million was also created.

„ 31 **Federal Farm Mortgage Corporation Act** passed to assist the credit operations of various agricultural agencies.

Apr. 13 **Johnson Act** passed. This prohibited financial transactions with foreign Governments in default to the United States.

„ 21 **Bankhead Cotton Control Act** passed. This instituted a scheme for the compulsory restriction of cotton, and gave financial assistance to cotton-growers.

June 6 **Securities Exchange Act** passed. This provided for the regulation of all stock exchanges and developed the Securities Act of 1933.

„ 12 **Reciprocal Tariff Act** passed. This constituted an amendment to the Tariff Act of 1930 and gave the President for three years the power to make commercial agreements with foreign countries.

„ 19 **Silver Purchase Act** passed. This laid down that one-quarter of the monetary stocks of the United States should be in silver, and directed the Government to take appropriate measures.

„ 24 **National Housing Act** passed to assist in granting loans for new house-construction and for renovation.

„ 27 **Railroad Retirement Act** passed, instituting a Federal system of pensions for railway employees.

June 28 **Tobacco Control Act** passed. This instituted a scheme for the compulsory restriction of tobacco, and gave financial assistance to tobacco-growers.

„ 28 **Frazier-Lemke Farm Mortgage Moratorium Act** passed.

Nov. 5 The Supreme Court upheld for the second time the State of New York's Milk Control Act.

1935

Feb. 18 The Supreme Court decided by 5 votes to 4 that Congress had been acting within its powers in abrogating the gold clause in private contracts.

Apr. 8 **Emergency Relief Appropriation Act** passed. This provided for a second public works programme and set up the Works Progress Administration.

May 6 The Supreme Court decided by 6 votes to 3 that the Railroad Pensions Act was unconstitutional.

„ 27 The Supreme Court unanimously decided that the establishment of codes of fair competition was unconstitutional ('Schechter decision'). This in effect invalidated the work of the N.R.A. Mr. Justice Cardozo filed a separate concurring opinion.

„ 27 The Supreme Court decided that the Frazier-Lemke Farm Mortgage Moratorium Act was unconstitutional.

July 5 **Labor Disputes Act** passed, establishing rules governing collective bargaining.

„ 26 **Banking Act of 1935** passed. This developed and put on a permanent basis the provisions of the Banking Act of 1933, and concentrated further power in the hands of the Federal Reserve Board.

Aug. 14 **Social Security Act** passed. This created machinery for the establishment of a vast scheme of social insurance and grants in aid.

„ 30 **Guffey Coal Act** passed. This provided for price-fixing and the establishment of a labour code in the soft-coal industry under a federal supervisory body.

1936

Jan. 13 The Supreme Court decided by 6 votes to 3 that the processing taxes of the A.A.A. were unconstitutional. This decision invalidated a large part of the crop restriction and regulation programme.

„ 27 **Veterans' Bonus Act** passed (overriding the President's veto). This involved the appropriation of $2,237 million

for payment of the face value of Soldiers' Adjusted Compensation (Bonus) Certificates.

Feb. 8 Repeal of Cotton, Tobacco, and Potato Control Acts.

„ 17 The Supreme Court decided by 8 votes to 1 that the Tennessee Valley Authority was acting constitutionally in selling electric power.

May 18 The Supreme Court decided by 6 votes to 3 that the Guffey Coal Act was unconstitutional.

June 1 The Supreme Court decided by 6 votes to 3 that the State of New York's Minimum Wage Act for women laundry-workers was unconstitutional.